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COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON FOREIGN AFFAIRS

Legislation on Foreign Relations Through 1988

JUNE 1989

CURRENT LEGISLATION AND RELATED EXECUTIVE ORDERS | VOLUME IV

U.S. SENATE
U.S. HOUSE OF REPRESENTATIVES

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FOREWORD

This volume of legislation and related material is part of a five volume set of laws and related material frequently referred to by the Committees on Foreign Relations of the Senate and Foreign Affairs of the House of Representatives, amended to date and annotated to show pertinent history or cross references.

Volumes I, II, III and IV contain legislation and related material and are republished with amendments and additions at the end of each annual session of Congress. Volume V which contains treaties and related material will not be revised every year, but only as necessary.

We wish to express our appreciation to Dianne E. Rennack and C. Winston Woodland of the Foreign Affairs and National Defense Division of the Congressional Research Service of the Library of Congress who prepared volume IV of this year's compilation.

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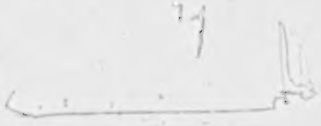
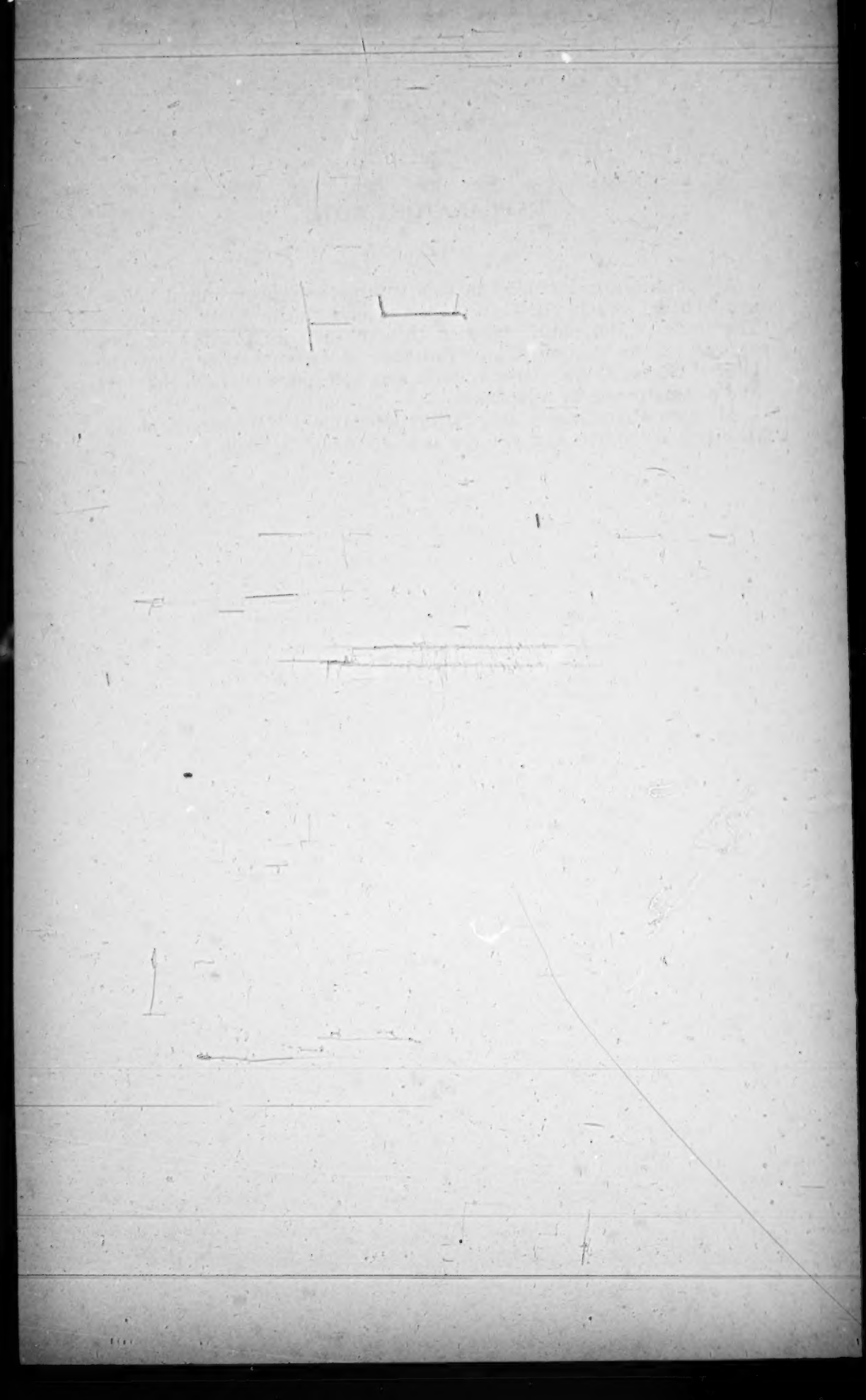


EXPLANATORY NOTE

All public laws included in this volume, except as noted below, are codified and in force through the end of the 100th Congress. The texts of the public laws in this volume are printed as they appear in the United States Statutes at Large rather than the United States Code. Amendments are incorporated into the text and distinguished by a footnote.

All Executive orders and State Department delegations of authority are codified and in force as of January 31, 1989.



ABBREVIATIONS

Bevans	Treaties and Other International Agreements of the United States of America, 1776–1949, compiled under the direction of Charles I. Bevans.
CFR	Code of Federal Regulations.
EAS	Executive Agreement Series.
F.R	Federal Register.
LNTS	League of Nations Treaty Series.
I Malloy, II Malloy	Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers, 1776–1909, compiled under the direction of the United States Senate by William M. Malloy.
Stat	United States Statutes at Large.
TIAS	Treaties and Other International Acts Series.
TS	Treaty Series.
UNTS	United Nations Treaty Series.
U.S.C	United States Code.
UST	United States Treaties and Other International Agreements.

CONTENTS

	Page
FOREWORD	III
EXPLANATORY NOTE	V
ABBREVIATIONS	VII
K. LAW OF THE SEA AND SELECTED MARITIME LEGISLATION	1
1. Law of the Sea	3
2. Marine Pollution	84
3. North Pacific Fisheries Act of 1954, as amended (Public Law 83-579)	106
4. Tuna Conventions	117
5. Whaling Convention Act of 1949 (Public Law 81-676)	153
6. Wildlife Sanctuary for Humpback Whales (Public Law 99-630)	160
7. Atlantic Salmon Convention Act of 1982 (title III of Public Law 97-389)	161
8. Pacific Salmon Treaty Act of 1985 (Public Law 99-5)	165
9. United States Fishery Export Promotion (Public Law 96-561) (partial text)	175
10. Driftnet Impact Monitoring, Assessment and Control (title IV of Public Law 100-220) (partial text)	177
11. Fishermen's Protective Act of 1967, as amended (Public Law 83-680)	181
12. Endangered Species Act of 1973, as amended (Public Law 93-205) (partial text)	195
13. Marine Mammal Protection Act of 1972, as amended (Public Law 92-522) (partial text)	214
14. Antarctic Marine Living Resources Convention Act of 1984 (title III of Public Law 98-623)	229
L. ENERGY, NATURAL RESOURCES, AND ENVIRONMENT	241
1. Atomic Energy and Related Materials	243
2. Nuclear Non-Proliferation Act of 1978 and Related Materials	314
3. Delegating to the Secretary of State Certain Functions With Respect to the Negotiation of International Agreements Relating to the Enhancement of the Environment (Executive Order 11742)	337
4. Defense Production Act Amendments of 1975, as amended (Public Law 94-152) (partial text)	338
5. Energy Coordinating Committee (Executive Order 12083)	343
6. Negotiations With Canada Concerning the Alaska Pipeline (Public Law 93-153) (partial text)	345
7. Energy Policy and Conservation Act (Public Law 94-163) (partial text)	347
8. Extension of the International Energy Program (Public Law 96-133)	372
9. Energy Emergency Preparedness Act of 1982 (Public Law 97-229)	374
10. Nuclear Waste Policy Act of 1982 (Public Law 97-425) (partial text)	377
11. International Environmental Protection Act of 1983 (Public Law 98-164) (partial text)	379
12. Global Climate Protection (Public Law 100-204) (partial text)	382
13. International Energy Emergency Authorities (Public Law 100-373)	385
14. Temporary Emergency Wildfire Suppression Act (Public Law 100-428)	386
15. Rio Grande Pollution Correction Act of 1987 (Public Law 100-465)	388
16. African Elephant Conservation Act of (Title II of Public Law 97-478)	390
M. AVIATION, SPACE, AND INTERNATIONAL SCIENTIFIC COOPERATION	399
1. Antihijacking Act of 1974 (Public Law 93-366) (partial text)	401
2. International Cooperation in Scientific Research	408
3. Arctic Research	417

Page

N. OTHER LEGISLATION 429

1. Provisions of Law Relating to Travel Outside the United States 431
2. Legislation Authorizing U.S. Participation in Parliamentary Conferences .. 437
3. International Claims Settlement Acts 450
4. Registration of Foreign Agents 523
5. Logan Act—Private Correspondence With Foreign Governments (Public Law 80-772) 542
6. Restriction on Intelligence Agency Cooperation with South Africa (Public Law 99-569) (partial text) 543
7. Policy on Recognition of the Palestine Liberation Organization (Public Law 99-591) (partial text) 544
8. Neutrality Act and Related Material 545
9. National Security Emergency Preparedness Responsibilities (Executive Order 12656) (partial text) 555
10. U.S. Government Opposition to the Practice of Torture (Public Law 98-447) 566
11. Commission on the Ukraine Famine Act (Public Law 99-180) (partial text) 569
12. Assignment of National Security and Emergency Preparedness Telecommunications Functions (Executive Order 12472) 573
13. Inspector General Act of 1978 (Public Law 95-452) 582
14. Resolution Establishing a Select Committee on Intelligence (S. Res. 400) (partial text) 604
15. Permanent Select Committee on Intelligence (House Rule XLVIII) (partial text) 606
16. National Security Council (Public Law 80-253) (partial text) 607
17. Iran-Iraq War Ceasefire (Public Law 100-96) 610
18. Appeal for the Release of Soviet Jewry (Public Law 99-81) 612
19. Soviet Spouse and Fiance Emigration (Public Law 100-222) 613
20. Tercentenary Celebration (Public Law 99-393) 615
21. National Year of Friendship with Finland (Public Law 99-602) 616
22. Greek Independence Day (Public Law 100-266) 617
23. National Former Prisoners of War Recognition Day (Public Law 100-269) .. 618
24. Jewish Heritage Week (Public Law 99-292) 619
25. Year of New Sweden Plaques (Public Law 100-295) 620
26. Religious Freedom in the Ukraine, U.S.S.R. (Public Law 100-305) 621
27. Commending Israel on its 40th Anniversary (Public Law 100-311) 623
28. Baltic Freedom Day (Public Law 100-343) 625
29. United States-Canada Days of Peace and Friendship (Public Law 100-361) 627
30. Geography Awareness Week (Public Law 100-391) 628
31. German-American Day (Public Law 100-392) 630
32. National POW/MIA Recognition Day (Public Law 100-431) 631
33. Mohandas K. Gandhi Day of Recognition (Public Law 100-468) 632
34. French Revolution Bicentennial (Public Law 100-482) 634
35. Restoration of a Free and Independent Cambodia (Public Law 100-502) 636
36. Week of Remembrance of Kristallnacht (Public Law 100-632) 639
37. National Sir Winston Churchill Recognition Week (Public Law 100-663) 640

INDEX 641

K. LAW OF THE SEA AND SELECTED MARITIME LEGISLATION

CONTENTS

	Page
1. Law of the Sea	3
a. Magnuson Fishery Conservation and Management Act of 1976, as amended (Public Law 94-265) (partial text)	3
b. Fishery Conservation Zone Transition Act, as amended (Public Law 95-6)	33
c. Governing International Fishery Agreement With Portugal (Public Law 96-561) (partial text)	39
d. Governing International Fishery Agreements with Japan and Spain (Title IV of Public Law 97-389)	40
e. Governing International Fishery Agreement with Iceland and the European Economic Community (Title I of Public Law 98-623)	41
f. Governing International Fishery Agreement With South Korea (Public Law 100-66) (partial text)	42
g. Governing International Fishery Agreement With Japan (Public Law 100-220) (partial text)	43
h. German Democratic Republic Fishery Agreement (Public Law 100-350)	44
i. United States-Soviet Union Fishery Agreement (Public Law 100-629) (partial text)	45
j. Deep Seabed Hard Mineral Resources Act (Public Law 96-283)	47
2. Marine Pollution	84
a. Act to Prevent Pollution from Ships (Public Law 96-478)	84
b. Intervention on the High Seas Act (Public Law 93-248)	95
c. Deepwater Port Act of 1974 (Public Law 93-627) (partial text)	100
3. North Pacific Fisheries Act of 1954, as amended (Public Law 83-579)	106
4. Tuna Conventions	117
a. Tuna Conventions Act of 1950, as amended (Public Law 81-764)	117
b. Atlantic Tunas Convention Act of 1975, as amended (Public Law 94-70)	124
c. Atlantic Tunas Convention Act of 1975, Appropriation Authorization (Public Law 96-339) (partial text)	135
d. Eastern Pacific Ocean Tuna Licensing Act of 1984 (Public Law 98-445)	137
e. South Pacific Tuna Act of 1988 (Public Law 100-330)	142
5. Whaling Convention Act of 1949 (Public Law 81-676)	153
6. Wildlife Sanctuary for Humpback Whales (Public Law 99-630)	160
7. Atlantic Salmon Convention Act of 1982 (Title III of Public Law 97-389)	161
8. Pacific Salmon Treaty Act of 1985 (Public Law 99-5)	165
9. United States Fishery Export Promotion Act (Public Law 96-561) (partial text)	175
10. Driftnet Impact Monitoring, Assessment, and Control (Title IV Public Law 100-220)	177
11. Fisherman's Protective Act of 1967, as amended (Public Law 83-680)	181
12. Endangered Species Act of 1973, as amended (Public Law 93-205) (partial text)	195
13. Marine Mammal Protection Act of 1972, as amended (Public Law 92-522) (partial text)	214
14. Antarctic Marine Living Resources Convention Act of 1984 (Title III of Public Law 98-623)	229

NOTE.—Conventions and agreements referred to by Acts in this section may be researched according to the conventional citations to such materials or by consulting the compilation *Treaties and Other International Agreements on Fisheries, Oceanographic Resources, and Wildlife Involving the United States.* U.S. Congress, Senate. Committee on Commerce, Science, and Transportation. Prepared by the Congressional Research Service, Library of Congress. Washington, U.S. Govt. Printing Off., 1977 (95th Congress, 1st Session. Committee Print, October 1977).

1. Law of the Sea

a. Magnuson Fishery Conservation and Management Act of 1976, as amended

Partial Text of Public Law 94-265 [H.R. 200], 90 Stat. 331, approved April 13, 1976, as amended by Public Law 95-6 [H.J. Res. 240], 91 Stat 14, approved February 1, 1977; by Public Law 95-354 [H.R. 10732], 92 Stat. 519, approved August 28, 1978; by Public Law 96-561 [S. 2163], 94 Stat. 3275, approved December 22, 1980; by Public Law 96-61 [S. 917], 93 Stat. 407, approved August 15, 1979; by Public Law 96-119 [H.R. 2035], 93 Stat. 859, approved November 16, 1979; by Public Law 96-470 [H.R. 6686], 94 Stat. 2237, approved October 19, 1980; by Public Law 96-561 [S. 2163], 96 Stat. 3275 at 3296, approved December 22, 1980; by Public Law 97-191 [S. 2535], 96 Stat. 107, approved June 1, 1982; by Public Law 97-453 [H.R. 5002], 96 Stat. 2481, approved January 12, 1983; by Public Law 98-623 [H.R. 6342], 98 Stat. 3394 at 3408, approved November 8, 1984; by Public Law 99-659 [S. 991]; 100 Stat. 3607, approved November 14, 1986; and by Public Law 100-239 [H.R. 2558]; 101 Stat. 1778, approved January 11, 1988

AN ACT To provide for the conservation and management of the fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Magnuson Fishery Conservation and Management Act of 1976".[1]

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.

TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

Sec. 101. United States sovereign rights to fish and fishery management authority.
Sec. 102. Exclusion for highly migratory species.
Sec. 103. Highly migratory species.
Sec. 104. Effective date.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 201. Foreign fishing.
Sec. 202. International fishery agreements.
Sec. 203. Congressional oversight of governing international fishery agreements.
Sec. 204. Permits for foreign fishing.
Sec. 205. Import prohibitions.
Sec. 206. Transitional provisions.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

. . . . . .

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 402. Repeals.

[1] 16 U.S.C. note. Sec. 238 of Public Law 96-561 changed the name of this Act from the "Fishery Conservation and Management Act of 1976." Such amendment became effective on Jan. 6, 1981. Sec. 238 further stipulated that all references to the Fishery Conservation and Management Act of 1976 shall be redesignated as references to the Magnuson Fishery Conservation and Management Act of 1976.

Sec. 403. Fishermen's Protective Act amendments.
Sec. 404. Marine Mammal Protection Act amendment.
Sec. 405. Atlantic Tunas Convention Act amendment.
Sec. 406. Authorization of appropriations.

SEC. 2.[2] FINDINGS, PURPOSES AND POLICY.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishing industry,[3] including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

---

[2] 16 U.S.C. 1801.

[3] The words "United States fishing industry" were substituted in lieu of the words "United States fishermen" by sec. 2(a) of Public Law 95-354 (92 Stat. 519).

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1)[4] to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish except highly migratory species, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development by the United States fishing industry[5] of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development.[6]

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs

---

[4] Para. (1) was comprehensively amended and restated by sec. 101(c)(1) of Public Law 99-659; 100 Stat. 3707.

[5] The words "by the United States fishing industry" were added by sec. 2(b) of Public Law 95-354 (92 Stat. 519).

[6] The phrase ", and to that end, to ensure that optimum yield determinations promote such development" was added by sec. 233 of Public Law 96-561.

of interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) [7] to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources.

SEC. 3.[8] DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLENTERATA

Bamboo Coral—Acanella spp.;
Black Coral—Antipathes spp.;
Gold Coral—Callogorgia spp.;
Precious Red Coral—Corallium spp.;
Bamboo Coral—Keratoisis spp.; and
Gold Coral—Parazoanthus spp.

CRUSTACEA

Tanner Crab—Chionoecetes tanneri;
Tanner Crab—Chionoecetes opilio;
Tanner Crab—Chionoecetes angulatus;
Tanner Crab—Chionoecetes bairdi;

[7] Paragraph (5) was comprehensively amended and restated by sec. 101(c)(1) of Public Law 99-659; 100 Stat. 3707.

[8] 16 U.S.C. 1802.

King Crab—Paralithodes camtschatica;
King Crab—Paralithodes platypus;
King Crab—Paralithodes brevipes;
Lobster—Homarus americanus;
Dungeness Crab—Cancer magister;
California King Crab—Paralithodes californiensis;
California King Crab—Paralithodes rathbuni;
Golden King Crab—Lithodes aequispinus;
Northern Stone Crab—Lithodes maja;
Stone Crab—Menippe mercenaria; and
Deep-sea Red Crab—Geryon quinquedens.

MOLLUSKS

Red Abalone—Haliotis rufescens;
Pink Abalone—Haliotis corrugata;
Japanese Abalone—Haliotis kamtschatkana;
Queen Conch—Strombus gigas;
Surf Clam—Spisula solidissima; and
Ocean Quahog—Arctica islandica.

SPONGES

Glove Sponge—Spongia cheiris; [9]
Sheepswool Sponge—Hippiospongia lachne;
Grass Sponge—Spongia graminea; and
Yellow Sponge—Spongia barbera.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) [10] The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(7) [10] The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

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[9] Sec. 112(2) of Public Law 99-659; 100 Stat. 3715 replaced the term "Hippiospongia canaliculata" with the current term.

[10] Para. 6 was added by sec. 101(a) of Public Law 99-659; 100 Stat. 3706. Sec. 101(a) also renumbered former pars. (6) and (7) as (7) and (8) and struck out former par. (8) which had defined the term "fishery conservation zone".

Sec. 101(c)(2) replaced the term "fishery conservation zone" with the term "exclusive economic zone" each time it appears in the Magnuson Fishery Conservation and Management Act.

(8) [10] The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

(A) The catching, taking, or harvesting of fish;

(B) The attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25) [11] The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(26) [11] The term "United States harvest fish" means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

(27) [11] The term "vessel of the United States" means—

(A) any vessel documented under chapter 121 of title 46, United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

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[11] Sec. 3 of Public Law 95-354 (92 Stat. 519) redesignated par. (25) as (27) and added new pars. (25) and (26). Par. (27) was subsequently amended and restated by sec. 15(a) of Public Law 97-453 (96 Stat. 2492). Sec. 2 of Public Law 100-239 (101 Stat. 1778) further amended and restated par. (27), which formerly read as follows:

"(27) The term 'vessel of the United States' means—

"(A) any vessel documented under the laws of the United States;

"(B) any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and measuring less than 5 net tons; or

"(C) any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and used exclusively for pleasure."

TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SEC. 101.[12, 13] UNITED STATES SOVEREIGN RIGHTS TO FISH AND FISHERY MANAGEMENT AUTHORITY.

(a) IN THE EXCLUSIVE ECONOMIC ZONE.—Except as provided in section 102, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.

(b) BEYOND THE EXCLUSIVE ECONOMIC ZONE.—The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within any foreign nation's territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States.

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

SEC. 102.[13, 14] EXCLUSION FOR HIGHLY MIGRATORY SPECIES.

The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish.

SEC. 103.[15] HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104.[16] EFFECTIVE DATE.

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHING AGREEMENTS

SEC. 201.[17] FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone,[10] or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone,[10] unless such foreign fishing—

(1) is authorized under subsection (b) or (c);

(2) is not prohibited by subsection (g); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

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[12] 16 U.S.C. 1811.

[13] Sections 101 and 102 were comprehensively amended and restated by sec. 101(b) of Public Law 99-659; 100 Stat. 3706.

[14] 16 U.S.C. 1812.

[15] 16 U.S.C. 1813.

[16] 16 U.S.C. 1811 note.

[17] 16 U.S.C. 1821.

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202 (b) or (c)), if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D)[18] United States observers required under subsection (i) be permitted to be stationed aboard any such vessel and

[18] Sec. 2(a)(1) of Public Law 97-453 (96 Stat. 2481), amended and restated subpar. (D). Subpar. (D) formerly read as follows:

"(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;"

that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which [19] exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and

(D) [20] take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d) [21] TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) As used in this subsection—

(A) The term "base harvest" means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

(B) The term "harvesting season" means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by

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[19] The words "harvest an amount of fish which" were added by sec. 4(2) of Public Law 95-354 (92 Stat. 519).

[20] Subpar. (D) was added by sec. 2(a)(2) of Public Law 97-453 (96 Stat. 2481).

[21] Subsec. (d) was amended and restated by sec. 230 of Public Law 96-561. If formerly read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act."

the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

(C) The term "calculation factor" means, with respect to each United States fishery, 15 percent of the base harvest.

(D) The term "reduction factor amount" means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting season, not less than 75 percent of the calculation factor;

(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the calculation factor.

For purposes of this paragraph, the term "designated preceding harvest season" means—

(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

(E) The term "annual fishing level" for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

(i) an amount equal to the reduction factor amount for that harvesting season; and

(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

(F) The term "United States fishery" means any fishery subject to the exclusive fishery management authority of the United States.

(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels), or

(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), may [22] allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

then such portion or part may be allocated [23] for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.

(e) ALLOCATION OF ALLOWABLE LEVEL.—(1) [24] (A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from [25] the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made of each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis

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[22] Sec. 404(1) of Public Law 98-623 (98 Stat. 3408) substituted the word "may" in lieu of the word "shall".

[23] Sec. 2(a)(3) of Public Law 97-453 (96 Stat. 2481) substituted the phrase "may be allocated" in lieu of the phrase "shall be allocated".

[24] Sec. 2(a)(4) of Public Law 97-453 (96 Stat. 2481) amended and restated par. (1) Previously, sec. 3 of Public Law 96-61 (93 Stat. 407) amended subsec. (e) by designating the existing text as par. (1) and adding a new par. (2). In addition, sec. 231 of Public Law 96-561 (94 Stat. 3297) amended and restated the last sentence of par. (1), effective for the 1981 harvesting season and harvesting seasons thereafter.

[25] Sec. 404(2)(A) of Public Law 98-623 (98 Stat. 3408) substituted the words "may make allocations to foreign nations from" in lieu of the words "shall determine the allocation among foreign nations of".

on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both [21] United States fish and [21] fishery products, particularly fish and fishery products for which the foreign nation has requested as allocation;[26]

(ii) [27] whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fishery exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone [10] for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and

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[26] Sec. 404(2)(B) of Public Law 98-623 (98 Stat. 3408) amended clause (i) by inserting the word "both", by substituting the word "and" in lieu of "or", and by adding the final phrase beginning with the words ", particularly fish and fishery products".

[27] Sec. 404(2)(C) of Public Law 98-623 (98 Stat. 3408) amended and restated clause (ii). It previously read as follows:

"(ii) Whether, and to what extent, such nation is cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;"

transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2) [28] (A) For the purposes of this paragraph—

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978(a)).

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of a foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause

[28] Par. (2) was added by sec. 3 of Public Law 96-61 (93 Stat. 407).

(ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.

(D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) [29] FOREIGN ALLOCATION REPORT.—The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall prepare and submit a report to the Congress and the President, not later than July 1, of each year, setting forth—

(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) and all permits issued pursuant to section 204(b)(6)B); and

(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.

(g) [29] RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(h) [29] PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

(1) [30] shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

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[29] Sec. 4(3) of Public Law 95-354 (Stat. 519) redesignated subsecs. (f) and (g) as (g) and (h), respectively, and added a new subsec. (f).

[30] Sec. 4(4) of Public Law 95-354 amended par. (1) by effectively adding the text of clause (B).

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b) (2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

(i) FULL OBSERVER COVERAGE PROGRAM.—(1)(A) Except as provided in paragraph (2),[31] the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.[10]

(B)[32] The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone[10] to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B)[33] the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of

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[31] Sec. 236 of Public Law 96-561 (94 Stat. 3299) added subsec. (i). Sec. 237 of the same Act stated that subsec. (i) shall take effect on Oct. 1, 1981, and shall apply to permits issued under sec. 204 of this Act after Dec. 31, 1981.

[32] Subpar. (B) was added by sec. 103(a)(2) of Public Law 99-659; 100 Stat. 3708.

[33] Subpar. (B) was added by sec. 103(a)(2) of Public Law 99-659; 100 Stat. 3708.

such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(3) [34] Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) [35] If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this Act."

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[34] Sec. 2(a)(5)(A)(i) of Public Law 97-453 (96 Stat. 2482) amended and restated par. (3). It formally read as follows:

"(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act."

[35] Sec. 2(a)(5)(A)(ii) of Public Law 97-453 (96 Stat. 2482) added a new par. (6) to subsec. (i), effective Jan. 1, 1984.

(j) [36] RECREATIONAL FISHING.—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone [10] and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 305. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

SEC. 202.[37] INTERNATIONAL FISHERY AGREEMENTS.

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone [10] (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone [10] (or within the area that will constitute such zone after February 28, 1977), or for anadro-

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[36] Sec. 2(a)(6) of Public Law 97-453 (96 Stat. 2483) added subsec. (j).
[37] 16 U.S.C. 1822.

mous species or Continental Shelf fishery resources beyond such zone or area—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone [10] of the United States in relation to any such nation.

(e) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to a exclusive economic zone [10] (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

SEC. 203.[38] CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) IN GENERAL.—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) COMPUTATION OF 60-DAY PERIOD.—For purposes of subsection (a)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) CONGRESSIONAL PROCEDURES.—

[38] 16 U.S.C. 1823.

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representa-

tives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from the time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

SEC. 204.[39] PERMITS FOR FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone [10] or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNMENT INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).[40] No

[39] 16 U.S.C. 1824.

[40] The sentence following this note was added by sec. 102(1) of Public Law 99-659, 100 Stat. 3707.

permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold [41] capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) [42] the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E) [43] the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;

(F) [43] the ocean area in which, and the season or period during which, such fishing will be conducted; and

(G) [44] all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards,

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3).[45] The Secretary of State [46] shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) [47] a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

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[41] Sec. 3(1) of Public Law 97-453 (96 Stat. 2483) inserted the word "hold".

[42] Subpar. (D) was amended and restated by sec. 4(5)(A) of Public Law 95-354 (92 Stat. 520).

[43] Sec. 4(5)(B) of Public Law 95-520 (92 Stat. 520) redesignated subpar. (E) as (F) and added a new subpar. (E).

[44] Subpara. (G) was added by sec. 103(b)(3) of Public Law 99-659; 100 Stat. 3709.

[45] The words "and shall be set forth under the name of each Council to which it will be transmitted for comment" which previously appeared at this point, were struck out by sec. 3(2) of Public Law 97-453 (96 Stat. 2483).

[46] The words to this point beginning with "a notice of receipt * * *" were substituted in lieu of the words "such application in the Federal Register and" by sec. 4(6) of Public Law 95-354 (92 Stat. 520).

(C) [47] a copy or a summary of the application to the appropriate council,

(5) ACTION BY COUNCIL.—After receiving a copy or summary of an application under paragraph (4)(C), the Council may [48] prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—(A) [49] After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B) [45] the application, if he determines that the fishing described in the application will meet the requirements of this Act [50] or he may disapprove all or any portion of the application.

(B) [49] (i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery

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[47] Subpars. (B) and (C) were amended and restated by sec. 3(3) of Public Law 97-453 (96 Stat. 2483). They previously read as follows:

"(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

"(C) a monthly summary of foreign fishing applications including a report on approval applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate."

The requirement for the summary mentioned in subpar. (C) to be provided on a monthly basis had previously been added by sec. 208 of Public Law 96-470 (94 Stat. 2245).

[48] The words to this point in par. (5) were substituted in lieu of the words "After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall" by sec. 3(4) of Public Law 97-453 (96 Stat. 2483).

[49] Sec. 4(7) of Public Law 95-354 (92 Stat. 520) designated the first paragraph of par. (6) as subpar. (A), added the words "subject, to subparagraph (B)," and also added the text of subpar. (B).

[50] The words following this note to the end of the sentence were added by sec. 102(3) of Public Law 99-659; 100 Stat. 3707.

concerned which will not be utilized by the United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishery vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D) [51] If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish vessels of the United States.

(E) [51] If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) [51] Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.[52]

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reason therefor. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into

[51] Sec. 4(8) of Public Law 95-354 (92 Stat. 521) redesignated subpar. (D) as (F) and added new subpars. (D) and (E).

[52] A former subpar. (D), which previously appeared at this point and had required a copy of each application approved also be submitted to the Senate Foreign Relations Committee and the House Merchant Marine and Fisheries Committee, was struck out by sec. 111(b) of Public Law 96-470 (94 Stat. 2239).

consideration the reasons for disapproval, may submit a revised application under this subsection.

(10)[53] FEES.—Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research administration, and enforcement, but excluding costs for observers covered by surcharges under section 201(i)(4)) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone [10] during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12)[54] SANCTIONS.—If any foreign fishing vessel has been used in the commission of any act prohibited by section 307, or if the owner or operator of the vessel has committed such an act, the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue, the Secretary shall—

(i) revoke such permit, if any, issued for the vessel under this subsection, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

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[53] Sec. 232(b) of Public Law 96-561 (94 Stat. 3298) amended and restated par. (10), effective after 1981. Sec. 232(a) of Public Law 96-561 had amended the existing text of par. (10) providing interim fees for permits during 1981 only. This amendment was then superseded by the amendment contained in sec. 232(b) of that act.

[54] Para. 12 was comprehensively amended and restated by sec. 102(4) of Public Law 99-659; 100 Stat. 3707.

(ii) suspend such permit for the period of time deemed appropriate;

(iii) deny a permit under this subsection to the vessel; or

(iv) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under that application.

Any permit which is suspended under this subparagraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(B) The Secretary may temporarily deny or suspend the permit of any foreign fishing vessel pending the outcome of any administrative proceeding respecting a violation of section 307 of this Act if the Secretary determines that—

(i) based upon information available to the Secretary, there are reasonable grounds to believe that the vessel has been used in the commission of such violation;

(ii) immediate suspension of fishing privileges would serve the purposes of this Act; and

(iii) either—

(I) the violation presents a serious threat to the public interest,

(II) the violation presents a serious threat to the achievement of any purpose or policy of this Act, or

(III) the owner or operator of the vessel has been involved in a prior violation of this Act.

In applying this subparagraph—

(I) the Secretary must notify the vessel owner of the proposed denial or suspension and give the owner a reasonable opportunity, not longer than 10 days from service of notice, to respond in writing or otherwise;

(II) if a permit is denied or suspended under this subparagraph, any administrative proceeding respecting the violation at issue must be held as promptly as possible; and

(III) if another permit application is pending for such vessel on or after the date of the violation, the secretary need not act on that application before deciding whether or not to deny or suspend temporarily a permit under this subparagraph.

(c) REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such per-

mits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205.[55] IMPORT PROHIBITIONS.

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201 (c) and (d) and 204(b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriated to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the

[55] 16 U.S.C. 1825.

Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.—As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed for (in which or in part) any fish.

SEC. 206.[56] TRANSITIONAL PROVISIONS.

(a) DEFINITION.—For purposes of this section, the term "governing international fishery agreement" does not include any governing international fishery agreement other than a governing international fishery agreement approved by the Congress pursuant to section 2 of the Fishery Conservation Zone Transition Act, or pursuant to any amendment to such section 2 if the effective date of such amendment is not later than February 28, 1977.

(b) ACTION BY COUNCILS.—Section 204(b)(5) shall not apply to any application submitted by a foreign nation pursuant to a governing international fishery agreement for permits authorizing fishing during 1977 by vessels of that nation within the exclusive economic zone [10] or for anadromous species or Continental Shelf fishery resources beyond such zone, but each appropriate Council may prepare and submit comments to the Secretary on such application—

(1) if the application has been received by the Council on or before the date of the enactment of this section, within 7 days after such date; or

(2) if the application is received by the Council from the Secretary of State after such date of enactment, within 7 days after the date on which the council receives the application.

The provisions of the Federal Advisory Committee Act shall not apply to the actions of any Council in preparing such comments.

(c) PERMITS.—Until May 1, 1977, the requirement in section 204(a) that foreign fishing vessels have on board a valid permit issued under section 204 shall not apply in the case of any foreign fishing vessel for which a permit is issued under an application to which subsection (b) applies. The failure of any such vessel to comply with such requirement before such date shall not be deemed to be a violation of section 307(1)(A).

(d) PERMIT FEES.—Until May 1, 1977, the requirement in section 204(b)(11), regarding the payment of applicable fees before foreign fishing permits are issued, may be waived by the Secretary with respect to permits to be issued under any application to which subsection (b) applies if the Secretary is satisfied that the foreign nation which made the application will pay the applicable fees before such date. Any permit issued under the waiver provided by this subsection shall expire on May 1, 1977, if the Secretary does not receive on or before such date applicable fees for the permit.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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[56] 16 U.S.C. 1826. Sec. 206 was added by Public Law 95-6 (91 Stat. 14).

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. * * * [Repealed—1986] [57]

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091–1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081–1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) [58] * * *

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966." and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) [59] * * *

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) $5,000,000 for the fiscal year ending June 30, 1976.

(2) $5,000,000 for transitional fiscal quarter ending September 30, 1976.

(3) $25,000,000 for the fiscal year ending September 30, 1977.

(4) $30,000,000 for the fiscal year ending September 30, 1978.

(5) [60] $30,000,000 for the fiscal year ending September 30, 1979.

(6) [61] $33,000,000 for the fiscal year ending September 30, 1980.

(7) $40,000,000 for the fiscal year ending September 30, 1981.

(8) $47,000,000 for the fiscal year ending September 30, 1982.

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[57] Sec. 401 was repealed by sec. 110 of Public Law 99–659; 100 Stat. 3715.

[58] Sec. 403(a) amends sec. 2 and 3(a) of the Fishermen's Protective Act of 1967. See page 181–182 for text.

[59] Sec. 405(a) amends sec. 2(4) of the Atlantic Tunas Convention Act. See page 124 for text.

[60] Par. (5) was added by sec. 1 of Public Law 95–354 (92 Stat. 519).

[61] The authorization figures for fiscal years 1980, 1981, and 1982 were added by sec. 1 of Public Law 96–61 (93 Stat. 407).

(9) [62] $59,000,000 for the fiscal year ending September 30, 1983.

(10) [62] $64,000,000 for the fiscal year ending September 30, 1984.

(11) [62] $69,000,000 for the fiscal year ending September 30, 1985.

(12) [63] $69,000,000 for fiscal year 1986.

(13) [63] $70,800,000 for fiscal year 1987.

(14) [63] $72,900,000 for fiscal year 1988.

(15) [63] $75,000,000 for fiscal year 1989.

[62] The authorization figures for fiscal years 1983, 1984, and 1985 were added by sec. 14(a) of Public Law 97–453 (96 Stat. 2492).

[63] Pars. (12) through (15) were added by sec. 111(a) of Public Law 99–659; 100 Stat. 3715.

b. Fishery Conservation Zone Transition Act, as amended

Partial text of Public Law 95–6, [H.J. Res. 240], 91 Stat. 14, approved February 21, 1977, as amended by Public Law 95–8 [H.R. 3753], 91 Stat. 18, approved March 3, 1977; by Public Law 95–73 [H.R. 5638], 91 Stat. 283, approved July 26, 1977; Public Law 95–219 [H.R. 9794], 91 Stat. 1613, approved December 28, 1977; Public Law 95–314 [H.R. 12571], 92 Stat. 376, approved July 1, 1978; Public Law 97–212 [H.R. 3816], 96 Stat. 143 at 148, approved June 30, 1982; Public Law 98–44 [S. 625], 97 Stat. 216, approved July 12, 1983; and by Public Law 98–364 H.R. 4997, 98 Stat. 440 at 442, approved July 17, 1984

JOINT RESOLUTION To give congressional approval to certain governing international fishery agreements negotiated in accordance with the Magnuson Fishery Conservation and Management Act of 1976, and for other purposes.

Whereas the Government of the United States of America and the Governments of the People's Republic of Bulgaria, the Socialist Republic of Romania, the Republic of China, the German Democratic Republic, the Union of Soviet Socialist Republics, and the Polish People's Republic have signed governing international fishery agreements for the conservation, optimum utilization, and rational management of fisheries subject to the exclusive fishery management jurisdiction of the United States under the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265) [1] (hereinafter referred to as the "Act"); and

Whereas the Act provides that after February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless (among other exceptions and requirements) such foreign fishing is authorized and conducted pursuant to a governing international fishery agreement; and

Whereas the Act also provides that no governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international agreement; and

Whereas the Act further provides that Congress may prohibit the entering into force and effect of any governing international fishery agreement by enactment of a joint resolution originating in either House of Congress during such 60-day period; and

Whereas, the sixty-day period will not elapse with respect to any governing international fishery agreement, referred to in the first clause of this preamble, before March 1, 1977, the date on which the fishery conservation zone of the United States takes effect; and

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[1] For text, see page 3.

Whereas early congressional action on these governing international fishery agreements is necessary in order that fishing vessels of the foreign nations concerned may be permitted to fish in the fishery conservation zone after February 28, 1977, in compliance with such Act; and

Whereas these governing international fishery agreements substantially comply with the requirements relating to such agreements contained in section 201(c) of the Act: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "Fishery Conservation Zone Transition Act".[2]

SEC. 2.[3] CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a)[4] Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act of 1976, the governing international fishery agreement between the Government of the United States of America and—

(1) the Government of the People's Republic of Bulgaria Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 14, 1974;

(2) the Government of the Socialist Republic of Romania Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(3) the Government of the Republic of China Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(4) the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(5) the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(6) the Government of the Polish People's Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 16, 1976;

(7)[5, 6] the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the

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[2] 16 U.S.C. 1801 note.

[3] 16 U.S.C. 1823 note.

[4] The subsec. designation "(a)" and a new subsec. (b) were added by sec. 10(a) of Public Law 97-212 (96 Stat. 148).

[5] Pars. (7), (8), (9), and (10) were added by Public Law 95-8 (91 Stat. 18).

[6] Sec. 106 of Public Law 98-364 (98 Stat. 442) included the following:

"SEC. 106. Notwithstanding any provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and upon certification by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives that a new governing international fishery agreement in conformity with such Act has been negotiated by the United

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message to Congress from the President of the United States dated February 21, 1977;

(8) [5] the Government of Japan Concerning Fisheries Off the Coasts of the United States (for 1977), as contained in the message to Congress from the President of the United States dated February 21, 1977;

(9) [5, 7] the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

(10) [5, 7] the Government of Spain Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977; and

(11) [8] the Government of Mexico Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated October 7, 1977;

is hereby approved by the Congress as a governing international fishery agreement for purposes of the Magnuson Fishery Conservation and Management Act of 1976. Each such agreement referred to in paragraphs (1) through (6) shall enter into force and effect with respect to the United States on the date of the enactment of this joint resolution, and each such agreement referred to in paragraphs (7) through (11) shall enter into force and effect with respect to the United States on February 27, 1977.[9]

(b) [4] Notwithstanding such section 203—

(1) the governing international fishery agreement referred to the subsection (a)(5), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 11, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976;

(2) the governing international fishery agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs, as contained in the message to

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States and the European Economic Community, the existing governing international fishery agreement referred to in section 2(e)(1) of the Fishery Conservation Zone Transition Act (16 U.S.C. 1823, note) may be extended or reinstated, as the case may be, and may be in force and effect with respect to the United States, for the period of time ending on the earlier of (1) the effective date of the new governing international fishery agreement, or (2) September 30, 1984."

[7] Sec. 10(b) of Public Law 97-212 (96 Stat. 148) included the following:

"(b) Notwithstanding any provision of the Act entitled 'An Act for the conservation and management of the fisheries, and for other purposes', dated April 13, 1976 (16 U.S.C. 1810 *et seq.*), the governing international fishery agreements referred to in section 2(a) (9) and (10) of the Fishery Conservation Zone Transition Act shall be extended, and shall be in force and effect with respect to the United States, for the period of time ending on—

"(1) the deadline for completion of Congressional review, pursuant to section 203(a) of such 1976 Act, of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that is a party to the agreement in question; or

"(2) July 31, 1982, if the United States and the respective foreign government that is a party to the agreement in question fail to sign a new governing international fishery agreement on or before that date."

[8] Par. (11) was added by sec. 1 of Public Law 95-219 (91 Stat. 1613).

[9] This sentence was amended and restated by Public Law 95-8 in order to reflect the additions of pars. (7)-(10); further amended by Public Law 95-219 to reflect the addition of par. (11).

the House of Representatives and the Senate from the Secretary of State dated June 15, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of the Act of 1976; and

(3) the governing international fishery agreement referred to in subsection (a)(6), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated June 21, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976.

Each such governing international fishery agreement shall enter into force and effect with respect to the United States on July 1, 1982.

(c) [10] Notwithstanding such section 203—

(1) the governing international fishery agreement referred to in subsection (a)(5), as extended until December 31, 1985,[11] pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 8, 1984,[11] is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976;

(2) the governing international fishery agreement referred to in subsection (a)(6), as extended until December 31, 1985,[11] pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 8, 1984,[11] is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976; and

(3) the governing international fishery agreement referred to in subsection (a)(4), as contained in the message to the House of Representatives and the Senate from the President of the United States dated May 3, 1983, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976.

The government international fishery agreements referred to in paragraphs (1) and (2) shall enter into force and effect with respect to the United States on July 1, 1984; and the governing international fishery agreement referred to in paragraph (3) [12] shall enter into force and effect with respect to the United States on July 1, 1983.

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SEC. 4. REPEAL OF NORTHWEST ATLANTIC FISHERIES ACT OF 1950.

The Northwest Atlantic Fisheries Act of 1950 (16 U.S.C. 981–991) is repealed as of March 1, 1977.

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[10] Sec. 105 of Public Law 98–44 (97 Stat. 217) added subsec. (c).

[11] Sec. 105 of Public Law 98–364 (98 Stat. 442) amended subsec. (c)(1) and (c)(2) by substituting December 31, 1985 and May 8, 1984 in lieu of July 1, 1984 and May 3, 1983, respectively.

[12] Sec. 105 of Public Law 98–364 (98 Stat. 442) added the words to this point in this sentence in lieu of the words "Each such governing international fishery agreement".

SEC. 5.[13] RECIPROCAL FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND CANADA.

(a) [14] CONGRESSIONAL APPROVAL.—The Congress hereby approves the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the Government of Canada (hereinafter in this section referred to as the "Agreement") as contained in the message to Congress from the President of the United States dated May 1, 1978. The Agreement shall be in force and effect with respect to the United States from January 1, 1978, until such later date in 1978 as may be determined pursuant to the terms of the Agreement.

(b) APPLICATION.—During the period when the Agreement is in force and effect with respect to the United States—

(1) vessels and nationals of Canada may fish within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, but only pursuant to, and in accordance with, the provisions of the Agreement; and

(2) title II of the Magnuson Fishery Conservation and Management Act of 1976 (relating to foreign fishing and international fishery agreements) and section 307 of such Act of 1976 (relating to prohibited acts) shall not apply with respect to fishing within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, by vessels and nationals of Canada which is pursuant to, and in accordance with, the provisions of the Agreement.

(c) FISHING STATISTICS.—(1) Any person who—

(A) owns or operates any fishing vessel which—

(i) is a vessel of the United States, and

(ii) engages in fishing to which the Agreement applies; or

(B) directly or indirectly receives, or may receive, fish to which the Agreement applies in the course of a commercial activity in quantities determined by the Secretary to be sufficient to assist in the carrying out of this paragraph,

shall submit to the Secretary such statistics (including, but not limited to, catch data) regarding such fishing or such receipt of fish as are necessary to fulfill the obligations of the United States under Article XIII of the Agreement. The Secretary, after consultation with the Secretary of State, shall issue such regulations as are necessary and appropriate to carry out the purposes of this paragraph. Section 303(d) of the Magnuson Fishery Conservation and Management Act of 1976 (relating to the confidentiality of statistics) shall apply with respect to all statistics submitted under this paragraph.

(2) Any violation of paragraph (1), or of any regulation issued pursuant to paragraph (1), by any person shall be deemed to be an act prohibited by section 307 of the Magnuson Fishery Conservation and Management Act of 1976. Any person who commits any such violation shall be liable to the United States for a civil penalty as provided for in section 308 of such Act of 1976. Sections 309

[13] 16 U.S.C. 1823 note. Sec. 5 was added by Public Law 95-73 (91 Stat. 283).

[14] Subsec. (a) was amended and restated by Public Law 95-314 (92 Stat. 376). Former subsec. (a) concerned congressional approval for a 1977 Reciprocal Fisheries Agreement between the United States and Canada.

(relating to criminal offenses) and 310 (relating to civil forfeiture) of such Act of 1976 shall not apply with respect to any such violation.

(d) DEFINITIONS.—As used in this section, the terms "anadromous species", "Continental Shelf fishery resources", "fishing conservation zone",[15] "fishing", "fishing vessel", "Secretary", and "vessel of the United States" shall have the same respective meanings as are given to such terms in section 3 of the Magnuson Fishery Conservation and Management Act of 1976.

[15] The term "fishery conservation zone", as used in the Magnuson Fishery Conservation and Management Act, was replaced with the term "exclusive economic zone", by sec. 101(c)(2) of Public Law 99-659 (100 Stat. 3707).

c. Governing International Fishery Agreement With Portugal

Partial text of Public Law 96-561 [S. 2163], 94 Stat. 3275 at 3287, approved December 22, 1980

AN ACT To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

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SEC. 145.[1] GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH PORTUGAL.

Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act of 1976, the governing international fishery agreement between the Government of the United States of America and the Government of Portugal Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated December 1, 1980—

(1) is hereby approved by Congress as a governing international fishery agreement for the purposes of such Act of 1976; and

(2) shall enter into force and effect with respect to the United States on the date of the enactment of this title.

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[1] 16 U.S.C. note.

d. Governing International Fishery Agreements with Japan and Spain

Title IV of Public Law 97-389 [H.R. 3942], 96 Stat. 1949, at 1954, approved December 29, 1982

AN ACT To amend the Commercial Fisheries Research and Development Act of 1964.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

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TITLE IV—GOVERNING INTERNATIONAL FISHERY AGREEMENTS

Sec. 401.[1] Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*) signed at Washington on September 10, 1982, is approved, and shall become effective on January 1, 1983.

Sec. 402.[1] Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Spain pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*) signed on July 29, 1982, is approved.

[1] 16 U.S.C. 1823 note.

e. Governing International Fishery Agreements with Iceland and the European Economic Community

Title I of Public Law 98–623 [H.R. 6342], 98 Stat. 3394, approved November 8, 1984

AN ACT To approve governing international fishery agreements with Iceland and the EEC; to establish national standards for artificial reefs; to implement the Convention on the Conservation of Antarctic Marine Living Resources; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—APPROVAL OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS WITH ICELAND AND THE EEC

Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823)—

(1) the governing international fishery agreement between the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated August 27, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act, and may enter into force with respect to the United States in accordance with the terms of Article XIX of the agreement after the date of the enactment of this title, upon signature of the agreement by both parties; and

(2) the governing international fishery agreement between the Government of the United States and the Government of the Republic of Iceland Concerning Fisheries off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 28, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act, and may enter into force with respect to the United States in accordance with the terms of Article XVI of the agreement after the date of the enactment of this title.

f. Governing International Fishery Agreement with South Korea

Partial text of Public Law 100–66 [United States–Korea Fishery Agreement; Sea Grant College Fellowship Program; H.R. 2480], 101 Stat. 384, approved July 10, 1987

AN ACT To extend temporarily the governing international fishery agreement between the United States and the Republic of Korea, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] EXTENSION OF GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND SOUTH KOREA.

Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the governing international fishery agreement entered into between the Government of the United States and the Government of the Republic of Korea on July 26, 1982, shall remain in force and effect with respect to the United States until the closing date of the sixty-day period referred to in section 203(a) [2] of such Act that applies with respect to any new governing international fishery agreement between the United States and the Republic of Korea that is transmitted to the Congress under section 203(a) after May 1, 1987, or November 1, 1987, whichever is earlier.

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[1] 16 U.S.C. note.
[2] 16 U.S.C. 1823. For text, see page 21.

g. Governing International Fishery Agreement with Japan

Title I of Public Law 100–220 [United States–Japan Fishery Agreement Approval Act of 1987; H.R. 3674], 101 Stat. 1458, approved December 29, 1987

AN ACT To provide congressional approval of the Governing International Fishery Agreements between the United States and Japan; to implement the provisions of Annex V to the International Convention for the Prevention of Pollution from Ships, 1973; to reauthorize the National Sea Grant College Program Act; to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—APPROVAL OF GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH JAPAN

SEC. 1001. APPROVAL OF AGREEMENT.

Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the Government of Japan Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated November 17, 1987—

(1) is approved by Congress as a governing international fishery agreement for purposes of such Act, and

(2) shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

h. German Democratic Republic Fishery Agreement

Public Law 100-350 [H.R. 4621], 102 Stat. 660, approved June 27, 1988

AN ACT To provide Congressional approval of the Governing International Fishery Agreement between the United States and the Government of the German Democratic Republic.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPROVAL OF GIFA WITH GERMAN DEMOCRATIC REPUBLIC.

That notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823), the extension of the governing international fishery agreement between the Government of the United States of American and the Government of the German Democratic Republic, as contained in the message to Congress from the President of the United States, dated May 3, 1988—

(1) is approved by Congress as a governing international fishery agreement for the purposes of such Act; and

(2) shall enter into force and effect with respect to the United States on the date of enactment of this Act.

SEC. 2. REAUTHORIZATION OF FISHERMEN'S PROTECTIVE ACT.

Section 7(e) of the Fishermen's Protective Act (22 U.S.C. 1977(e)) is amended by striking "October 1, 1988" and inserting in lieu thereof "October 1, 1989".

SEC. 3. COMPOSITION OF NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL.

Section 205(d)(1)(E) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4004(d)(1)(E)) is amended by striking "and who are not resident of the States of Alaska, Pacific, Southeast, or Northeast regions" and inserting in lieu thereof ", at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions".

SEC. 4. AMENDMENTS TO SOUTH PACIFIC TUNA ACT OF 1988.

The South Pacific Tuna Act of 1988 is amended—

(1) in section 8(a)—

(A) by striking "any gravity" and inserting in lieu thereof "and gravity"; and

(B) by striking "history or prior" and inserting in lieu thereof "history of prior";

(2) in section 8(g)(1), by striking "Treasury" and inserting in lieu thereof "Treaty"; and

(3) in section 11(a)(2)(C), by striking "5(b)(7)" and inserting in lieu thereof "5(a)(7)".

i. United States-Soviet Union Fishery Agreement

Partial Text of Public Law 100-629 [H.R. 4919], 102 Stat. 3287, approved November 7, 1988

AN ACT To approve the governing international fishery agreement between the United States and the Union of the Soviet Socialist Republics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SOVIET UNION FISHING AGREEMENT.

That notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of the Union of the Soviet Socialist Republics, as contained in the Message to Congress from the President of the United States dated June 22, 1988, is approved by the Congress and shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

* * * * * * *

SEC. 5. NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY.

(a) IN GENERAL.—The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the Message to Congress from the President of the United States dated June 22, 1988.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The advisory body established pursuant to this section shall consist of 12 members, as follows:

(A) The Director of the Department of Fisheries of the State of Washington.

(B) The Commission of the Department of Fish and Game of the State of Alaska.

(C) Five members appointed by the Secretary of State from among persons nominated by the Governor of Alaska on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

(D) Five members appointed by the Secretary of State from among persons nominated by the Governor of Washington on the basis of their knowledge and experience in

[1] 16 U.S.C. 1823 note.

commercial harvesting, processing, or marketing of fishery resources.

(2) NOMINATIONS.—The Governor of Alaska and the Governor of Washington shall each nominate 10 persons for purposes of paragraph (1).

(c) PAY.—Members of the advisory body established pursuant to this section shall receive no pay by reason of their service as members of the advisory body.

(d) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to an advisory body established pursuant to this section.

SEC. 6. USE OF VESSEL IDENTIFICATION EQUIPMENT.

(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201(c)(2)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act on the results of their compliance with subsection (a).

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j. Deep Seabed Hard Mineral Resources Act [1]

Public Law 96-283 [H.R. 2759], 94 Stat. 553, approved June 28, 1980, as amended by Public Law 97-416 [H.R. 6120], 96 Stat. 2084, approved January 4, 1983; by Public Law 98-623 [H.R. 6342], 98 Stat. 3394 at 3408, approved November 8, 1984; and by Public Law 99-507 [H.R. 4212], 100 Stat. 1847, approved October 21, 1986

AN ACT To establish an interim procedure for the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deep Seabed Hard Mineral Resources Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the United States' requirements for hard minerals to satisfy national industrial needs will continue to expand and the demand for such minerals will increasingly exceed the available domestic sources of supply;

(2) in the case of certain hard minerals, the United States is dependent upon foreign sources of supply and the acquisition of such minerals from foreign sources is a significant factor in the national balance-of-payments position;

(3) the present and future national interest of the United States requires the availability of hard mineral resources which is independent of the export policies of foreign nations;

(4) there is an alternate source of supply, which is significant in relation to national needs, of certain hard minerals, including nickel, copper, cobalt, and manganese, contained in the nodules existing in great abundance on the deep seabed;

(5) the nations of the world, including the United States, will benefit if the hard mineral resources of the deep seabed beyond limits of national jurisdiction can be developed and made available for their use;

(6) in particular, future access to the nickel, copper, cobalt, and manganese resources of the deep seabed will be important to the industrial needs of the nations of the world, both developed and developing;

(7) on December 17, 1970, the United States supported (by affirmative vote) the United Nations General Assembly Resolution 2749 (XXV) declaring inter alia the principle that the mineral resources of the deep seabed are the common heritage of mankind, with the expectation that this principle would be le-

[1] 30 U.S.C. 1401-1473.

gally defined under the terms of a comprehensive international Law of the Sea Treaty yet to be agreed upon;

(8) it is in the national interest of the United States and other nations to encourage a widely acceptable Law of the Sea Treaty, which will provide a new legal order for the oceans covering a broad range of ocean interests, including exploration for and commercial recovery of hard mineral resources of the deep seabed;

(9) the negotiations to conclude such a Treaty and establish the international regime governing the exercise of rights over, and exploration of, the resources of the deep seabed, referred to in General Assembly Resolution 2749 (XXV) are in progress but may not be concluded in the near future;

(10) even if such negotiations are completed promptly, much time will elapse before such an international regime is established and in operation;

(11) development of technology required for the exploration and recovery of hard mineral resources of the deep seabed will require substantial investment for many years before commercial production can occur, and must proceed at this time if deep seabed minerals are to be available when needed;

(12) it is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reasonable regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law;

(13) pending a Law of the Sea Treaty, and in the absence of agreement among states on applicable principles of international law, the uncertainty among potential investors as to the future legal regime is likely to discourage or prevent the investments necessary to develop deep seabed mining technology;

(14) pending a Law of the Sea Treaty, the protection of the marine environment from damage caused by exploration or recovery of hard mineral resources of the deep seabed depends upon the enactment of suitable interim national legislation;

(15) a Law of the Sea Treaty is likely to establish financial arrangements which obligate the United States or United States citizens to make payments to an international organization with respect to exploration or recovery of the hard mineral resources of the deep seabed; and

(16) legislation is required to establish an interim legal regime under which technology can be developed and the exploration and recovery of the hard mineral resources of the deep seabed can take place until such time as a Law of the Sea Treaty enters into force with respect to the United States.

(b) PURPOSES.—The Congress declares that the purposes of this Act are—

(1) to encourage the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) pending the ratification by, and entering into force with respect to, the United States of such a Treaty, to provide for the establishment of an international revenue-sharing fund the proceeds of which shall be used for sharing the international community pursuant to such Treaty;

(3) to establish, pending the ratification by, and entering into force with respect to, the United States of such a Treaty, an interim program to regulate the exploration for the commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(4) to accelerate the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assure that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea; and

(5) to encourage the continued development of technology necessary to recover the hard mineral resources of the deep seabed.

SEC. 3. INTERNATIONAL OBJECTIVES OF THIS ACT.

(a) DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.—By the enactment of this Act, the United States—

(1) exercises its jurisdiction over United States citizens and vessels, and foreign persons and vessels otherwise subject to its jurisdiction, in the exercise of the high seas freedom to engage in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in accordance with generally accepted principles of international law recognized by the United States; but

(2) does not thereby assert sovereignty of sovereign or exclusive rights or jurisdiction over, or the ownership of, any areas or resources in the deep seabed.

(b) SECRETARY OF STATE.—(1) The Secretary of State is encouraged to negotiate successfully a comprehensive Law of the Sea Treaty which, among other things, provides assured and nondiscriminatory access to the hard mineral resources of the deep seabed for all nations, gives legal definition to the principle that the resources of the deep seabed are the common heritage of mankind, and provides for the establishment of requirements for the protection of the quality of the environment as stringent as those promulgated pursuant to this Act.

(2) Until such a Treaty is concluded, the Secretary of State is encouraged to promote any international actions necessary to adequately protect the environment from adverse impacts which may result from any exploration for and commercial recovery of hard mineral resources of the deep seabed carried out by persons not subject to this Act.

SEC. 4. DEFINITIONS.

For purposes of this Act, the term—

(1) "commercial recovery" means—

(A) any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary pur-

pose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(B) if such recovered hard mineral resource will be processed at sea, such processing; and

(C) if the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(2) "Continental Shelf" means—

(A) the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(B) the selected and subsoil of similar submarine areas adjacent to the coast of islands;

(3) "controlling interest", for purposes of paragraph 14(C) of this section, means a director or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(4) "deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(A) the Continental Shelf of any nation; and

(B) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(5) "exploration" means—

(A) any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) the nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) the environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(B) the taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication, and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(6) "hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals at least one of which contains, manganese, nickel, cobalt, or copper;

(7) "international agreement" means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(8) "licensee" means the holder of a license issued under title I of this Act to engage in exploration;

(9) "permittee" means the holder of a permit issued under title I of this Act to engage in commercial recovery;

(10) "person" means any United States citizen, any individual, and any other corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(11) "reciprocating state" means any foreign nation designated as such by the Administration under section 118;

(12) "Administrator" means the administrator of the National Oceanic and Atmospheric Administration;

(13) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(14) "United States citizen" means—

(A) any individual who is a citizen of the United States;

(B) any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(C) any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in subparagraph (A) or (B).

TITLE I—REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

SEC. 101. PROHIBITED ACTIVITIES BY UNITED STATES CITIZENS.

(a) PROHIBITED ACTIVITIES AND EXCEPTIONS.—(1) No United States citizen may engage in any exploration or commercial recovery unless authorized to do so under—

(A) a license or a permit issued under this title;

(B) a license, permit, or equivalent authorization issued by a reciprocating state; or

(C) an international agreement which is in force with respect to the United States.

(2) The prohibitions of this subsection shall not apply to any of the following activities:

(A) Scientific research, including that concerning hard mineral resources.

(B) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment.

(C) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction, or testing is conducted on shore, or does not involve the recovery of any incidental hard mineral resources.

(D) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under this title, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement.

(E) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(b) EXISTING EXPLORATION.—(1) Subsection (a)(1)(A) shall not be deemed to prohibit any United States citizen who is engaged in exploration before the effective date of this Act from continuing to engage in such exploration—

(A) if such citizen applies for a license under section 103(a) with respect to such exploration within such reasonable period of time, after the date on which initial regulations to implement section 103(a) are issued, as the Administrator shall prescribe; and

(B) until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(2) Notwithstanding paragraph (1), if the President by Executive order determines that immediate suspension of exploration activities is necessary for the reasons set forth in section 106(a)(2)(B) or the Administrator determines that immediate suspension of activities is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, the Administrator is authorized, notwithstanding any other requirement of this Act, to issue an emergency order requiring any United States citizen who is engaged in exploration before the effective date of this Act to immediately suspend exploration activities. The issuance of such emergency order is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(3) The timely filing of any application for a license under paragraph (1)(A) shall entitle the applicant to priority of right for the issuance of such license under section 103(b). In any case in which more than one application referred to in paragraph (1) is filed based on exploration plans required by section 103(a)(2) which refer to all or part of the same deep seabed area, the Administrator shall, in taking action on such applications, apply principles of equity which take into consideration, among other things, the date on which the applicants or predecessors in interest, or component organizations thereof, commenced exploration activities and the continuity and extent of such exploration and amount of funds expended with respect to such exploration.

(c) INTERFERENCE.—No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the United States to the licensee or permittee under this Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. United States citizens shall exercise their rights on the high seas

with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

SEC. 102. LICENSES FOR EXPLORATION AND PERMITS FOR COMMERCIAL RECOVERY.

(a) AUTHORITY TO ISSUE.—Subject to the provisions of this Act, the Administrator shall issue to applicants who are eligible therefor licenses for exploration and permits for commercial recovery.

(b) NATURE OF LICENSES AND PERMITS.—(1) A license or permit issued under this title shall authorize the holder thereof to engage in exploration or commercial recovery, as the case may be, consistent with the provisions of this Act, the regulations issued by the Administrator to implement the provisions of this Act, and the specific terms, conditions, and restrictions applied to the license or permit by the Administrator.

(2) Any license or permit issued under this title shall be exclusive with respect to the holder thereof as against any other United States legal entity organized or existing under the laws of, any reciprocating state.

(3) A valid existing license shall entitle the holder, if otherwise eligible under the provisions of this Act and regulations issued under this Act, to a permit for commercial recovery. Such a permit recognizes the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of this Act.

(4) In the event of interference with the exploration or commercial recovery activities of a licensee or permittee by nationals of other states, the Secretary of State shall use all peaceful means to resolve the controversy by negotiation, conciliation, arbitration, or resort to agreed tribunals.

(c) RESTRICTIONS.—(1) The Administrator may not issue—

(A) any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(B) any license or permit the exploration plan or recovery plan of which, submitted pursuant to section 103(a)(2), would apply to an area to which applies, or would conflict with, (i) any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under section 103(b), (ii) any exploration plan or recovery plan associated with any existing license or permit, or (iii) any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to this title;

(C) a permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such perm... is issued to other than the licensee for such area;

(D) any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1983;

(E) any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit, (i) the applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant, or (ii) a license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106; or

(F) a license or permit, or approve the transfer of a license or permit, except to a United States citizen.

(2) No permittee may use any vessel for the commercial recovery of hard mineral resources or for the processing at sea at hard mineral resources recovered under the permit issued to the permittee unless the vessel is documented under the laws of the United States.

(3) Each permittee shall use at least one vessel documented under the laws of the United States for the transportation from each mining site of hard mineral resources recovered under the permit issued to the permittee.

(4) For purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in the commercial recovery, processing, or transportation from any mining site of hard mineral resources recovered under a permit issued under this title shall be deemed to be used in, and used in an essential service in, the foreign commerce of foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936, and shall be deemed to be a vessel as defined in section 1101(b) of that Act.

(5) Except as otherwise provided in this paragraph, the processing on land of hard mineral resources recovered pursuant to a permit shall be conducted within the United States; *Provided,* That the President does not determine that such restrictions contravene the overriding national interests of the United States. The Administrator may allow the processing of hard mineral resources at a place other than within the United States if he finds, after opportunity for an agency hearing, that—

(A) the processing of the quantity concerned of such resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of a permittee; and

(B) satisfactory assurances have been given by the permittee that such resource, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

SEC. 103. LICENSE AND PERMIT APPLICATIONS, REVIEW, AND CERTIFICATION.

(a) APPLICATIONS.—(1) Any United States citizen may apply to the Administrator for the issuance of transfer of a license for exploration or a permit for commercial recovery.

(2)(A) Applications for issuance or transfer of license for exploration and permits for commercial recovery shall be made in such form and manner as the Administrator shall prescribe in general and uniform regulations and shall contain such relevant financial, technical, and environmental information as the Administrator may by regulations require as being necessary and appropriate for carrying out the provisions of this title. In accordance with such regulations, each applicant for the issuance of a license shall submit an exploration plan as described in subparagraph (B), and each applicant for a permit shall submit a recovery plan as described in subparagraph (C).

(B) The exploration plan for a license shall set forth the activities proposed to be carried out during the period of the license, describe the area to be explored, and include the intended exploration schedule and methods to be used, the development and testing of systems for commercial recovery to take place under the terms of the license, an estimated schedule of expenditures, measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery, and such other information as is necessary and appropriate to carry out the provisions of this title. The area set forth in an exploration plan shall be of sufficient size to allow for intensive exploration.

(C) The recovery plan for a permit shall set forth the activities proposed to be carried out during the period of the permit, and shall include the intended schedule of commercial recovery, environmental safeguards and monitoring systems, details of the area or areas proposed for commercial recovery, a resource assessment thereof, the methods and technology to be used for commercial recovery and processing, the methods to be used for disposal of wastes from recovery and processing, and such other information as is necessary and appropriate to carry out the provisions of this title.

(D) The applicant shall select the size and location of the area of the exploration plan or recovery plan, which area shall be approved unless the Administrator finds that—

(i) the area is not a logical mining unit; or

(ii) commercial recovery activities in the proposed location would result in a significant adverse impact on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions.

(E) For purposes of subparagraph (D), "logical mining unit" means—

(i) in the case of a license for exploration, an area of the deep seabed which can be explored under the license in an efficient economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environ-

mental characteristics, and the state of the technology of the applicant as set forth in the exploration plan; or

(ii) in the case of a permit, an area of the deep seabed—

(I) in which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(II) which is not larger than is necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(III) in relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(b) PRIORITY OF RIGHT FOR ISSUANCE.—Subject to section 101(b), priority of right for the issuance of licenses to applicants shall be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under subsection (a)(2) of this section are filed with the Administrator. Priority of right shall not be lost in the case of any application filed which is in substantial but not full compliance with such requirements if the applicant thereafter brings the application into conformity with such requirements within such reasonable period of time as the Administrator shall prescribe in regulations.

(c) ELIGIBILITY FOR CERTIFICATION.—Before the Administrator may certify any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with other departments and agencies pursuant to subsection (e) of this section, that—

(1) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will be financially responsible to meet all obligations which may be required of a licensee or permittee to engage in the exploration or commercial recovery proposed in the application;

(2) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will have the technological capability to engage in such exploration or commercial recovery;

(3) the applicant has satisfactorily fulfilled all obligations under any license or permit previously issued or transferred to the applicant under this Act; and

(4) the proposed exploration plan or recovery plan of the applicant meets the requirements of this Act and the regulations issued under this Act.

(d) ANTITRUST REVIEW.—(1) Whenever the Administrator receives any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator shall transmit promptly a complete copy of such application to the Attorney General of the United States and the Federal Trade Commission.

(2) The Attorney General and the Federal Trade Commission shall conduct such antitrust review of the application as they deem appropriate and shall, if they deem appropriate, advise the Administrator of the likely effects of such issuance or transfer on competition.

(3) The Attorney General and the Federal Trade Commission may make any recommendations they deem advisable to avoid any action upon such application by the Administrator which would create or maintain a situation inconsistent with the antitrust laws. Such recommendations may include, without limitation, the denial of issuance or transfer of the license or permit or issuance or transfer upon such terms and conditions as may be appropriate.

(4) Any advice or recommendation submitted by the Attorney General or the Federal Trade Commission pursuant to this subsection shall be submitted within 90 days after receipt by them of the application. The Administrator shall not issue or transfer the license or permit during that 90-day period, except upon written confirmation by the Attorney General and the Federal Trade Commission that neither intends to submit any further advice or recommendation with respect to the application.

(5) If the Administrator decides to issue or transfer the license or permit with respect to which denial of the issuance or transfer of the license or permit has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer the license or permit without imposing those terms and conditions recommended by the Attorney General or the Federal Trade Commission as appropriate to prevent any situation inconsistent with the antitrust laws, the Administrator shall, prior to or upon issuance or transfer of the license or permit, notify the Attorney General and the Federal Trade Commission of the reasons for such decision.

(6) The issuance or transfer of a license or permit under this title shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(7) As used in this subsection, the term "antitrust laws" means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1–7); sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8–11); the Clayton Act (15 U.S.C. 12 *et seq.*); the Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13–13b and 21a); and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

(e) OTHER FEDERAL AGENCIES.—The Administrator shall provide by regulation for full consultation and cooperation, prior to certification of an application for the issuance or transfer of any license for exploration or permit for commercial recovery and prior to the issuance or transfer of such a license or permit, with other Federal agencies or departments which have programs or activities within their statutory responsibilities which would be affected by the activities proposed in the application for the issuance or transfer of a license or permit. Not later than 30 days after the date of enactment of this Act, the heads of any Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the

recovery or processing of hard mineral resources shall transmit to the Administrator written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law. To the extent possible, such agencies shall cooperate to reduce the number of separate actions required to satisfy the statutory responsibilities of these agencies. The Administrator shall transmit to each such agency or department a complete copy of each application and each such agency or department, based on its legal responsibilities and authorities, may, not later than 60 days after receipt of the application, recommend certification of the application, issuance or transfer of the license or permit, or denial of such certification, issuance, or transfer. In any case in which an agency or department recommends such a denial, it shall set forth in detail the manner in which the area of responsibility and shall indicate how the application may be amended, or how terms, conditions, or restrictions might be added to the license or permit, to assure compliance with such law or regulation.

(f) REVIEW PERIOD.—All time periods for the review of an application for issuance or transfer of a license or permit established pursuant to this section shall, to the maximum extent practicable, run concurrently from the date on which the application is received by the Administrator.

(g) APPLICATION CERTIFICATION.—Upon making the applicable determinations and findings required in sections 101, 102, and this section with respect to any applicant for the issuance or transfer of a license or a permit and the exploration or commercial recovery proposed by such applicant, after completion of procedures for receiving the application required by this Act, and upon payment by the applicant of the fee required under section 104, the Administrator shall certify the application for the issuance or transfer of the license or permit. The Administrator, to the maximum extent possible, shall endeavor to complete certification action on the application within 100 days after its submission. If final certification or denial of certification has not occurred within 100 days after submission of the application, the Administrator shall inform the applicant in writing of the then pending unresolved issues, the Administrator's efforts to resolve them, and an estimate of the time required to do so.

SEC. 104. LICENSE AND PERMIT FEES.

No application for the issuance or transfer of a license for exploration or permit for commercial recovery shall be certified unless the applicant pays to the Administrator a reasonable administrative fee which shall be deposited into miscellaneous receipts of the Treasury. The amount of the administrative fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred in reviewing and processing the application.

SEC. 105. LICENSE AND PERMIT TERMS, CONDITIONS, AND RESTRICTIONS; ISSUANCE AND TRANSFER OF LICENSES AND PERMITS.

(a) ELIGIBILITY FOR ISSUANCE OR TRANSFER OF LICENSE OR PERMIT.—Before issuing or transferring a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with interested departments and agen-

cies pursuant to section 103(e), and upon considering public comments received with respect to the license or permit, that the exploration or commercial recovery proposed in the application—

(1) will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law;

(2) will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States;

(3) will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict;

(4) cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable environmental impact statement prepared pursuant to section 109(c) or 109(d); and

(5) will not pose an inordinate threat to the safety of life and property at sea.

(b) ISSUANCE AND TRANSFER OF LICENSES AND PERMITS WITH TERMS, CONDITIONS, AND RESTRICTIONS.—(1) Within 180 days after certification of any application for the issuance or transfer of a license or permit under section 103(g), the Administrator shall propose terms and conditions for, and restrictions on, the exploration or commercial recovery proposed in the application which are consistent with the provisions of this Act and regulations issued under this Act. If additional time is needed, the Administrator shall notify the applicant in writing of the reasons for the delay and indicate the approximate date on which the proposed terms, conditions, and restrictions will be completed. The Administrator shall provide to each applicant a written statement of the proposed terms, conditions, and restrictions. Such terms, conditions, and restrictions shall be generally specified in regulations with general criteria and standards to be used in establishing such terms, conditions and restrictions for a license or permit and shall be uniform in all licenses or permits, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea.

(2) After preparation and consideration of the final environmental impact statement pursuant to section 109(d) on the proposed issuance of a license or permit and subject to the other provisions of this Act, the Administrator shall issue to the applicant the license or permit with the terms, conditions, and restrictions incorporated therein.

(3) The licensee or permittee to whom a license or permit is issued or transferred shall be deemed to have accepted the terms, conditions, and restrictions in the license or permit if the licensee or permittee does not notify the Administrator within 60 days after receipt of the license or permit of each term, condition, and restriction with which the licensee or permittee takes exception. The licensee or permittee, may, in addition to such objections as may be raised under applicable provisions of law, object to any term, condi-

tion, or restriction on the ground that the term, condition, or restriction is inconsistent with the Act or the regulations promulgated thereunder. If, after the Administrator takes final action on these objections, the licensee or permittee demonstrates that a dispute remains on a material issue of fact, the licensee or permittee is entitled to a decision on record after the opportunity for an agency hearing pursuant to sections 556 and 557 of title 5, United States Code. Any such decision made by the Administrator shall be subject to judicial review as provided in chapter 7 of title 5, United States Code.

(c) MODIFICATION AND REVISION OF TERMS, CONDITIONS, AND RESTRICTIONS.—(1) After the issuance or transfer of any license or permit under subsection (b), the Administrator, after consultation with interested agencies and the licensee or permittee, may modify any term, condition, or restriction in such license or permit—

(A) to avoid unreasonable interference with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law;

(B) if relevant data and other information (including, but not limited to, data resulting from exploration or commercial recovery activities under the license or permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea and if such modification is consistent with the regulations issued to carry out section 109(b);

(C) to avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(D) to avoid any situation which may reasonably be expected to lead to a breach of international peace in writing by the President.

(2) During the term of a license or a permit, the licensee or permittee may submit to the Administrator an application for a revision of the license or permit or the exploration plan or recovery plan associated with the license or permit. The Administrator shall approve such application upon a finding in writing that the revision will comply with the requirements of this Act and the regulations issued under this Act.

(3) The Administrator shall establish, by regulation, guidelines for a determination of the scale or extent of a proposed modification or revision for which any or all license or permit application requirements and procedures, including a public hearing, shall apply. Any increase in the size of the area, or any change in the location of an area, to which an exploration plan or a recovery plan applies, except an incidental increase or change, must be made by application for another license or permit.

(4) The procedures set forth in subsection (b)(3) of this section shall apply with respect to any modification under this subsection in the same manner, and to the same extent, as if such modification were an initial term, condition, or restriction proposed by the Administrator.

(d) PRIOR CONSULTATIONS.—Prior to making a determination to issue, transfer, modify, or renew a license or permit under this sec-

tion, the Administrator shall consult with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), if the activities undertaken pursuant to such license or permit could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

SEC. 106. DENIAL OF CERTIFICATION OF APPLICATIONS AND OF ISSUANCE, TRANSFER, SUSPENSION, AND REVOCATION OF LICENSES AND PERMITS; SUSPENSION AND MODIFICATION OF ACTIVITIES.

(a) DENIAL, SUSPENSION, MODIFICATION, AND REVOCATION.—(1) The Administration may deny certification of an application for the issuance or transfer of, and may deny the issuance or transfer of, a license for exploration or permit for commercial recovery if the Administrator finds that the applicant, or the activities proposed to be undertaken by the applicant, do not meet the requirements set forth in section 103(c), section 105(a), or in any other provision of this Act, or any regulation issued under this Act, for the issuance or transfer of a license or permit.

(2) The Administrator may—

(A) in addition to, or in lieu of, the imposition of any civil penalty under section 302(a), or in addition to the imposition of any fine under section 303, suspend or revoke any license or permit issued under this Act, or suspend or modify any particular activities under such a license or permit, if the licensee or permittee, as the case may be, substantially fails to comply with any provision of this Act, any regulation issued under this Act, or any term, condition, or restriction of the license or permit; and

(B) suspend or modify particular activities under any license or permit, if the President determines that such suspension or modification is necessary (i) to avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States, or (ii) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(3) No action may be taken by the Administrator to deny issuance or transfer of or to revoke any license or permit or, except as provided in subsection (c), to suspend any license or permit or suspend or modify particular activities under a license or permit, unless the Administrator—

(A) publishes in the Federal Register and gives the applicant, licensee, or permittee, as the case may be, written notice of the intention of the Administrator to deny the issuance or transfer of or to suspend, modify, or revoke the license or permit and the reason therefor; and

(B) if the reason for the proposed denial, suspension, modification, or revocation is a deficiency which the applicant, licensee, or permittee can correct, affords the applicant, licensee, or permittee a reasonable time, but not more than 180 days from the date of the notice or such longer period as the Administra-

tor may establish for good cause shown, to correct such deficiency.

(4) The Administrator shall deny issuance or transfer of, or suspend or revoke, any license or permit or order the suspension or modification of particular activities under a license or permit—

(A) on the thirtieth day after the date of the notice given to the applicant, licensee, or permittee under paragraph (3)(A) unless before such day the applicant, licensee, or permittee requests a review of the proposed denial, suspension, modification, or revocation; or

(B) on the last day of the period established under paragraph (3)(B) in which the applicant, licensee, or permittee must correct a deficiency, if such correction has not been made before such day.

(b) ADMINISTRATIVE REVIEW OF PROPOSED DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION.—Any applicant, licensee, or permittee, as the case may be, who makes a timely request under subsection (a) for review of a denial of issuance or transfer, or a suspension or revocation, or a license for exploration or permit for commercial recovery, or a suspension or modification of particular activities under such a license or permit, is entitled to an adjudication on the record after an opportunity for an agency hearing with respect to such denial or suspension, revocation, or modification.

(c) EFFECT ON ACTIVITIES; EMERGENCY ORDERS.—The issuance of any notice of proposed suspension or revocation of a license for exploration or permit for commercial recovery or proposed suspension or modification of particular activities under such a license or permit shall not affect the continuation of exploration or commercial recovery activities by the licensee or permittee. The provisions of paragraphs (3) and (4) of subsection (a) and the first sentence of this subsection shall not apply when the President determines by Executive order that an immediate suspension of a license for exploration or permit for commercial recovery, or immediate suspension or modification of particular activities under such a license or permit, is necessary for the reasons set forth in subsection (a)(2)(B), or the Administrator determines that an immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, and the Administrator issues an emergency order requiring such immediate suspension.

(d) JUDICIAL REVIEW.—Any determination of the Administrator, after any appropriate administrative review under subsection (b), to certify or deny certification of an application for the issuance or transfer of, or to issue, deny issuance of, transfer, deny the transfer of, modify, renew, suspend, or revoke any license for exploration or permit for commercial recovery, or suspend or modify particular activities under such a license or permit, or any immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, pursuant to subsection (c), is subject to judicial review as provided in chapter 7 of title 5, United States Code.

SEC. 107. DURATION OF LICENSES AND PERMITS.

(a) DURATION OF A LICENSE.—Each license for exploration shall be issued for a period of 10 years. If the license has substantially complied with the license and the exploration plan associated therewith and has requested extensions of the license, the Administrator shall extend the license on terms, conditions, and restrictions consistent with this Act and the regulations issued under this Act for periods of not more than 5 years each.

(b) DURATION OF A PERMIT.—Each permit for commercial recovery shall be issued for a term of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The permit of any permittee who is not recovering hard mineral resources in commercial quantities at the end of 10 years shall be terminated; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, unavoidable delays in construction, major unanticipated vessel repairs that prevent the permittee from conducting commercial recovery activities during an annual period, or other circumstances beyond the control of the permittee, extend the 10-year period, but not beyond the initial 20-year term of the permit.

SEC. 108. DILIGENCE REQUIREMENTS.

(a) IN GENERAL.—The exploration plan or recovery plan and the terms, conditions, and restrictions of each, license and permit issued under this title shall be designed to assure diligent development. Each licensee shall pursue diligently the activities described in the exploration plan of the licensee, and each permittee shall pursue diligently the activities described in the recovery plan of the permittee.

(b) EXPENDITURES.—Each license shall require such periodic reasonable expenditures for exploration by the licensee as the Administrator shall establish, taking into account the size of the area of the deep seabed to which the exploration plan associated with the license applies and the amount of funds which is estimated by the Administrator to be required for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. Such required expenditures shall not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(c) COMMERCIAL RECOVERY.—Once commercial recovery is achieved, the Administrator shall, within reasonable limits and taking into consideration all relevant factors, require the permittee to maintain commercial recovery throughout the period of the permit; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, or other circumstances beyond the control of the permittee, authorize the temporary suspension of commercial recovery activities. The duration of such a suspension shall not exceed one year at any one time, unless the Administrator determines that conditions justify an extension of the suspension.

SEC. 109. PROTECTION OF THE ENVIRONMENT.

(a) ENVIRONMENT ASSESSMENT—(1) DEEP OCEAN MINING ENVIRONMENTAL STUDY (DOMES).—The Administrator shall expand and

accelerate the program assessing the effects on the environment from exploration and commercial recovery activities, including seabased processing and the disposal at sea of processing wastes, so as to provide an assessment, as accurate as practicable, of environmental impacts of such activities for the implementation of subsections (b), (c), and (d).

(2) SUPPORTING OCEAN RESEARCH.—The Administrator also shall conduct a continuing program of ocean research to support environmental assessment activity through the period of exploration and commercial recovery authorized by this Act. The program shall include the development, acceleration, and expansion, as appropriate, of studies of the ecological, and physical aspects of the deep seabed in general areas of the ocean where exploration and commercial development under the authority of this Act are likely to occur, including, but not limited to—

(A) natural diversity of the deep seabed biota;

(B) life histories of major benthic, midwater, and surface organism most likely to be affected by commercial recovery activities;

(C) long- and short-term effects of commercial recovery on the deep seabed biota; and

(D) assessment of the effects of seabased processing activities.

Within 160 days after the date of enactment of this Act, the Administrator shall prepare a plan to carry out the program described in this subsection, including necessary funding levels for the next five fiscal years, and shall submit the plan to the Congress.

(b) TERMS, CONDITIONS, AND RESTRICTIONS.—Each license and permit issued under this title shall contain such terms, conditions, and restrictions, established by the Administrator, which prescribe the actions the license or permittee shall take in the conduct of exploration and commercial recovery activities to assure protection of the environment. The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Before establishing such terms, conditions, and restrictions, the Administrator shall consult with the Administrator of the Environmental Protection Agency, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating, concerning such terms, conditions, and restrictions, and the Administrator shall take into account and give due consideration to the information contained in each final environmental impact statement prepared with respect to such license or permit pursuant to subsection (d).

(c) PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.—(1) If the Administrator, in consultation with the Administrator of the Environmental Protection Agency and with assistance of other appropriate Federal agencies, determines that a programmatic environmental impact statement is required, the Administrator shall, as soon as practicable after the enactment of this act, with respect

to the areas of the oceans in which any United States citizen is expected to undertake exploration and commercial recovery under the authority of this Act—

(A) prepare and publish draft programmatic environmental impact statements which assess the environmental impacts of exploration and commercial recovery in such areas;

(B) afford all interested parties a reasonable time after such dates of publication to submit comments to the Administrator on such draft statements; and

(C) thereafter prepare (giving full consideration to all comments submitted under subparagraph (B)) and publish final programmatic environmental impact statements regarding such areas.

(2) With respect to the area of the oceans in which exploration and commercial recovery by any United States citizen will likely first occur under the authority of this Act, the Administrator shall prepare a draft and final programmatic environmental impact statement as required under paragraph (1), except that—

(A) the draft programmatic environmental impact statement shall be prepared and published as soon as practicable but not later than 270 days (or such longer period as the Administrator may establish for good cause shown) after the date of enactment of this Act; and

(B) the final programmatic environmental impact statement shall be prepared and published within 180 days (or such longer period as the Administrator may establish for good cause shown) after the date on which the draft statement is published.

(d) ENVIRONMENTAL IMPACT STATEMENTS ON ISSUANCE OF LICENSES AND PERMITS.—The issuance of, but not the certification of an application for, any license or permit under this title shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969. In preparing an environmental impact statement pursuant to this subsection, the Administrator shall consult with the agency heads referred to in subsection (b) and shall take into account, and give due consideration to, the relevant information contained in any applicable studies and any other environmental impact statement prepared pursuant to this section. Each draft environmental impact statement prepared pursuant to this subsection shall be published, with the terms, conditions, and restrictions proposed pursuant to section 105(d), within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the application for the license or permit concerned is certified by the Administrator. Each final environmental impact statement shall be published 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the draft environmental impact statement is published.

(e) EFFECT ON OTHER LAW.—For the purposes of this Act, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be "a vessel or other floating craft" under section 502(12)(B) of the Clean Water Act and any dis-

charge of a pollutant from such vessel or other floating craft shall be subject to the Clean Water Act.

(f) STABLE REFERENCE AREAS.—

(1) Within one year after the enactment of this Act the Secretary of State shall, in cooperation with the Administrator and as part of the international consultations pursuant to subsection 118(f), negotiate with all nations that are identified in such subsection for the purpose of establishing international stable reference areas in which no mining shall take place: *Provided, however,* That this subsection shall not be construed as requiring any substantial withdrawal of deep seabed areas from deep seabed mining authorized by this Act.

(2) Nothing in this Act shall be construed as authorizing the United States to unilaterally establish such reference area or areas nor shall the United States recognize the unilateral claim to such reference area or areas by any State.

(3) Within four years after the enactment of this Act, the Secretary of State shall submit a report to Congress on the progress of establishing such stable reference areas, including the designation of appropriate zones to insure a representative and stable biota of the deep seabed.

(4) For purposes of this section "stable reference areas" shall mean an area or areas of the deep seabed to be used as a reference zone or zones for purposes of resource evaluation and environmental assessment of deep seabed mining in which no mining will occur.

SEC. 110. CONSERVATION OF NATURAL RESOURCES.

For the purpose of conservation of natural resources, each license and permit issued under this title shall contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license or permit applies. In establishing these terms, conditions, and restrictions, the Administrator shall consider the state of the technology, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration or commercial recovery activities, economic and resource data, and the national need for hard mineral resources. As used in this Act, the term "conservation of natural resources" is not intended to grant, imply, or create any inference of production controls or price regulation, in particular those which would affect the volume of production, prices, profits, markets, or the decision of which minerals or metals are to be recovered, except as such efforts may be incidental to actions taken pursuant to this section.

SEC. 111. PREVENTION OF INTERFERENCE WITH OTHER USES OF THE HIGH SEAS.

Each license and permit issued under this title shall include such restrictions as may be necessary and appropriate to ensure that exploration or commercial recovery activities conducted by the licensee or permittee do not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

SEC. 112. SAFETY OF LIFE AND PROPERTY AT SEA.

(a) CONDITIONS REGARDING VESSELS.—The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, shall require in any license or permit issued under this title, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license or permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning, and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea.

(b) APPLICABILITY OF OTHER LAWS.—Notwithstanding any other provision of law, any vessel described in subsection (a) shall be subject to the provisions of the International Voyage Load Line Act of 1973, and to the provisions of titles 52 and 53 of the Revised Statutes and all Acts amendatory thereof or supplementary thereto.

SEC. 113. RECORDS, AUDITS, AND PUBLIC DISCLOSURE.

(a) RECORDS AND AUDITS.—(1) Each licensee and permittee shall keep such records, consistent with standard accounting principles, as the Administrator shall by regulation prescribe. Such records shall include information which will fully disclose expenditures for exploration and commercial recovery, including processing of hard mineral resources, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (1).

(b) SUBMISSION OF DATA AND INFORMATION.—Each licensee and permittee shall be required to submit to the Administrator such data or other information as the Administrator may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of any license or permit, compliance with the reporting requirement contained in section 309; and evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

(c) PUBLIC DISCLOSURE.—Copies of any document, report, communication, or other record maintained or received by the Administrator containing data or information required under this title shall be made available to any person upon any request which (1) reasonably describes such record and (2) is made in accordance with rules adopted by the Administrator stating the time, place, fees (if any, not to exceed the direct cost of the services rendered), and procedures to be followed, except that neither the Administrator nor any other officer or employee of the United States may disclose any data or information knowingly and willingly required under this title the disclosure of which is prohibited by section 1905 of title 18, United States Code. Any officer or employee of the United States who discloses data or information in violation of this subsection shall be subject to the penalties set forth in section 303(b) of this Act.

SEC. 114. MONITORING OF ACTIVITIES OF LICENSEES AND PERMITTEES.

Each license and permit issued under this title shall require the licensee or permittee—

(1) to allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee or permittee in exploration or commercial recovery activities (A) to monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license or permit, and (B) to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor the environmental effects of the exploration and commercial recovery activities in accordance with guidelines issued by the Administrator and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

SEC. 115. RELINQUISHMENT, SURRENDER, AND TRANSFER OF LICENSES AND PERMITS.

(a) RELINQUISHMENT AND SURRENDER.—Any licensee or permittee may at any time, without penalty—

(1) surrender to the Administrator a license or a permit issued to the licensee or permittee; or

(2) relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

Any licensee or permittee who surrenders a license or permit, or relinquishes any such right, shall remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under such license or permit.

(b) TRANSFER.—Any license or permit, upon written request of the licensee or permittee, may be transferred by the Administrator; except that no such transfer may occur unless the proposed transferee is a United States citizen and until the Administrator determines that (1) the proposed transfer is in the public interest, and (2) the proposed transferee and the exploration or commercial recovery activities the transferee proposes to conduct meet the requirements of this Act and regulations issued under this Act.

SEC. 116. PUBLIC NOTICE AND HEARINGS.

(a) REQUIRED PROCEDURES.—The Administrator may issue regulations to carry out this Act, establish and significantly modify terms, conditions, and restrictions in licenses and permits issued under this title, and issue or transfer licenses and permits under this title, only after public notice and opportunity for comment and hearings in accordance with the following:

(1) The Administrator shall publish in the Federal Register notice of all applications for licenses and permits, all proposals

to issue or transfer licenses and permits, all regulations implementing this Act, and terms, conditions, and restrictions on licenses and permits, and all proposals to significantly modify licenses and permits. Interested persons shall be permitted to examine the materials relevant to any of these actions, and shall have at least 60 days after publication of such notice to submit written comments to the Administrator.

(2) The Administrator shall hold a public hearing in an appropriate location and may employ such additional methods as the Administrator deems appropriate to inform interested persons about each action specified in paragraph (1) and to invite their comments thereon.

(b) ADJUDICATORY HEARING.—If the Administrator determines that there exists one or more specific and material factual issues which require resolution by formal process, as least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5, United States Code. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to take any action referred to in subsection (a). Hearings held pursuant to this section shall be consolidated insofar as practicable with hearings held by other agencies.

SEC. 117. CIVIL ACTIONS.

(a) EQUITABLE RELIEF.—Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on that person's behalf in the United States District Court for the District of Columbia—

(1) against any person who is alleged to be in violation of any provision of this Act or any condition of a license or permit issued under this title; or

(2) against the Administrator when there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary.

if the person bringing the action has a valid legal interest which is or may be adversely affected by such alleged violation or failure to perform. In suits brought under this subsection, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the provisions of this Act, or any term, condition, or restriction of a license or permit issued under this title, or to order the Administration to perform such act or duty.

(b) NOTICE.—No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to the alleged violation in a court of the United States; except that in any such civil action, any person having a valid legal interest which is or may be adversely affected by the alleged violation may intervene; or

(2) under subsection (a)(2) of this section, prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines that such an award is appropriate.

(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall restrict the rights which any person or class of persons may have under other law to seek enforcement or to seek any other relief. All vessel safety and environmental requirements of or under this Act shall be in addition to other requirements of law.

SEC. 118. RECIPROCATING STATES.

(a) DESIGNATION.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, may designate any foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation—

(1) regulates the conduct of its citizens and other persons subject to its jurisdiction engaged in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in a manner compatible with that provided in this Act and the regulations issued under this act, which includes adequate measures for the protection of the environment, the conservation of natural resources, and the safety of life and property at sea, and includes effective enforcement provisions;

(2) recognizes licenses and permits issued under this title to the extent that such nation, under its laws, (A) prohibits any person from engaging in exploration or commercial recovery which conflicts with that authorized under any such license or permit and (B) complies with the date for issuance of licenses and the effective date for permits provided in section 102(c)(1)(D) of this Act;

(3) recognizes, under its procedures, priorities of right, consistent with those provided in this Act and the regulations issued under this Act, for applications for licenses for exploration or permits for commercial recovery, which applications are made either under its procedures or under this Act; and

(4) provides an interim legal framework for exploration and commercial recovery which does not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

(b) EFFECT OF DESIGNATION.—No license or permit shall be issued under this title permitting any exploration or commercial recovery which will conflict with any license, permit, or equivalent authorization issued by any foreign nation which is designated as a reciprocating state under subsection (a).

(c) NOTIFICATION.—Upon receipt of any application for a license or permit under this title, the Administrator shall immediately notify all reciprocating states of such application. The notification

shall include those portions of the exploration plan or recovery plan submitted with respect to the application, or a summary thereof, and any other appropriate information not required to be withheld from public disclosure by section 113(c).

(d) REVOCATION OF RECIPROCATING STATE STATUS.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall revoke the designation of a foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation no longer complies with the requirements of subsection (a). At the request of any holder of a license, permit, or equivalent authorization of such foreign nation, who obtained the license, permit, or equivalent authorization while such foreign nation was a reciprocating state, the Administrator, in consultation with the Secretary of State, may decide to recognize the license, permit, or equivalent authorization for purposes of subsection (b).

(e) AUTHORIZATION.—The President is authorized to negotiate agreements with foreign nations necessary to implement this section.

(f) INTERNATIONAL CONSULTATIONS.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall consult with foreign nations which enact, or are preparing to enact, domestic legislation establishing an interim legal framework for exploration and commercial recovery of hard mineral resources. Such consultations shall be carried out with a view to facilitating the designation of such nations as reciprocating states and, as necessary, the negotiation of agreements with foreign nations authorized by subsection (e). In addition, the Administrator shall provide such foreign nations with information on environmental impacts of exploration and commercial recovery activities, and shall provide any technical assistance requested in designating regulatory measures to protect the environment.

TITLE II—TRANSITION TO INTERNATIONAL AGREEMENT

SEC. 201. DECLARATION OF CONGRESSIONAL INTENT.

It is the intent of Congress—

(1) that any international agreement to which the United States becomes a party should, in addition to promoting other national oceans objectives—

(A) provide assured and nondiscriminatory access, under reasonable terms and conditions, to the hard mineral resources of the deep seabed for United States citizens, and

(B) provide security of tenure by recognizing the rights of United States citizens who have undertaken exploration or commercial recovery under title I before such agreement enters into force with respect to the United States to continue their operations under terms, conditions, and restrictions which do not impose significant new economic burdens upon such citizens with respect to such operations with the effect of preventing the continuation of such operations on a viable economic basis;

(2) that the extent to which any such international agreement conforms to the provisions of paragraph (1) should be determined by the totality of the provisions of such agreement, including, but not limited to, the practical implications for the security of investments of any discretionary powers granted to an international regulatory body, the structures and decision-making procedures of such body, the availability of impartial and effective procedures for the settlement of disputes, and any features that tend to discriminate against exploration and commercial recovery activities undertaken by United States citizens; and

(3) that this Act should be transitional pending—

(A) the adoption of an international agreement at the Third United Nations Conference on the Law of the Sea, and the entering into force of such agreement, or portions thereof, with respect to the United States, or

(B) if such adoption is not forthcoming, the negotiation of a multilateral or other treaty concerning the deep seabed, and the entering into force of such treaty with respect to the United States.

SEC. 202. EFFECT OF INTERNATIONAL AGREEMENT.

If an international agreement enters into force with respect to the United States, any provision of title I, this title, or title III, and any regulation issued under any such provision, which is not inconsistent with such international agreement shall continue in effect with respect to United States citizens. In the implementation of such international agreement the Administrator, in consultation with the Secretary of State, shall make every effort, to the maximum extent practicable consistent with the provisions of that agreement, to provide for the continued operation of exploration and commercial recovery activities undertaken by United States citizens prior to entry into force of the agreement. The Administrator shall submit to the Congress, within one year after the date of such entry into force, a report on the actions taken by the Administrator under this section, which report shall include, but not be limited to—

(1) a description of the status of deep seabed mining operations of United States citizens under the international agreement; and

(2) an assessment of whether United States citizens who were engaged in exploration or commercial recovery on the date such agreement entered into force have been permitted to continue their operations.

SEC. 203. PROTECTION OF INTERIM INVESTMENTS.

In order to further the objectives set forth in section 201, the Administrator, not more than one year after the date of enactment of this Act—

(1) shall submit to the Congress proposed legislation necessary for the United States to implement a system for the protection of interim investments that has been adopted as part of an international agreement and any resolution relating to such international agreement; or

(2) if a system for the protection of interim investments has not been so adopted, shall report to the Congress on the status of negotiations relating to the establishment of such a system.

SEC. 204. DISCLAIMER OF OBLIGATIONS TO PAY COMPENSATION.

Sections 201 and 202 of this Act do not create or express any legal or moral obligation on the part of the United States Government to compensate any person for any impairment of the value of that person's investment in any operation for exploration or commercial recovery under title I which might occur in connection with the entering into force of an international agreement with respect to the United States.

TITLE III—ENFORCEMENT AND MISCELLANEOUS PROVISIONS

SEC. 301. PROHIBITED ACTS.

It is unlawful for any person who is a United States citizen, or a foreign national on board a vessel documented or numbered under the laws of the United States, or subject to the jurisdiction of the United States under a reciprocating state agreement negotiated under section 118(e)—

(1) to violate any provision of this act, any regulation issued under this Act, or any term, condition, or restriction of any license or permit issued to such person under this Act;

(2) to engage in exploration or commercial recovery after the revocation, or during the period of suspension, of an applicable license or permit issued under this Act, to engage in a particular exploration or commercial recovery activity during the period such activity has been suspended under this Act, or to fail to modify a particular exploration or commercial recovery activity for which modification was required under this Act;

(3) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of this Act, as provided in sections 114 and 304, to board a vessel documented or numbered under the laws of the United States, or any vessel for which such boarding is authorized by a treaty or executive agreement, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this Act or any regulation, term, condition, or restriction referred to in paragraph (1);

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (3);

(5) to resist a lawful arrest for any act prohibited by this section;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any hard mineral resource recovered, processed, or retained in violation of this Act or any regulation, term, condition, or restriction referred to in paragraph (1); or

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of any other person subject to this section knowing that such other person has committed any act prohibited by this section.

SEC. 302. CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.—Any person subject to section 301 who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed any act prohibited by section 301 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Administrator by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, any history or prior offenses, good faith demonstrated in attempting to achieve timely compliance after being cited for the violation, and other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.—Any person subject to section 301 against whom a civil penalty is assessed under subsection (a) may obtain review thereof in an appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record which the particular violation was found and such penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence as provided in section 706(2)(E) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person subject to section 301 fails to pay a civil penalty assessed against such person after the penalty has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the civil penalty assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) COMPROMISE OR OTHER ACTION BY THE ADMINISTRATOR.—The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section unless an action brought under subsection (b) or (c) is pending in a court of the United States.

SEC. 303. CRIMINAL OFFENSE.

(a) OFFENSE.—A person subject to section 301 is guilty of an offense if such person willfully and knowingly commits any act prohibited by section 301.

(b) PUNISHMENT.—Any offense described in paragraphs (1), (2), and (6) of section 301 is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraphs (3), (4), (5), and (7) of section 301 is punishable by a fine of not more than $75,000 or imprisonment for

~~not more than six months, or both.~~ If, in the commission of any offense, the person subject to the jurisdiction of the United States uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any such Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than ten years, or both.

SEC. 304. ENFORCEMENT.

(a) RESPONSIBILITY.—Subject to the other provisions of this subsection, the Administrator shall enforce the provisions of this Act. The Secretary of the department in which the Coast Guard is operating shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this Act as are authorized under other provisions of law and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of the provisions of this Act. The Secretary of the department in which the Coast Guard is operating shall have the exclusive responsibility for enforcement measures which affect the safety of life and property at sea. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b). While providing such assistance, these officers and employees shall be under the control, authority, and supervision of the Coast Guard. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) POWERS OF AUTHORIZED OFFICERS.—To enforce this Act on board any vessel subject to the provisions of the Act, any officer who is authorized by the Administrator or by the Secretary of the department in which the Coast Guard is operating may—

(1) board and inspect any vessel which is subject to the provisions of this Act;

(2) search any such vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this Act;

(3) arrest any person subject to section 301 if the officer has reasonable cause to believe that the person has committed a criminal offense under section 303;

(4) seize any such vessel together with it gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act if such seizure is necessary to prevent evasion of the enforcement of this Act;

(5) seize any hard mineral resource recovered or processed in violation of any provision of this Act;

(6) seize any other evidence related to any violation of any provision of this Act;

(7) execute any warrant or other process issued by any court of competent jurisdiction; and

(8) exercise any other lawful authority.

(c) DEFINITION.—For purposes of this section, the term "provisions of this Act" or "provision of this Act" means (1) any provision of title I or II or this title, (2) any regulation issued under title I, title II, or this title, and (3) any term, condition, or restriction of any license or permit issued under title I.

(d) PROPRIETARY INFORMATION.—Proprietary and privileged information seized or maintained under this title concerning a person or vessel engaged in exploration or commercial recovery shall not be made available for general or public use or inspection. The Administrator and the Secretary of the department in which the Coast Guard is operating shall issue regulations to insure the confidentiality of privileged and proprietary information.

SEC. 305. LIABILITY OF VESSELS.

Any vessel documented or numbered under the laws of the United States (except a public vessel engaged in noncommercial activities) which is used in any violation of this Act, any regulation issued under this Act, or any term, condition, or restriction of any license or permit issued under title I shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof.

SEC. 306. CIVIL FORFEITURES.

(a) IN GENERAL.—Any vessel subject to the provisions of sections 304 and 305, including its gear, furniture, appurtenances, stores, and cargo, which is used, in any manner, in connection with or as a result of the commission of any act prohibited by section 301 and any hard mineral resource which is recovered, processed, or retained, in any manner, in connection with or as a result of any such act, shall be subject to forfeiture to the United States. All or part of such vessel, and all such hard mineral resources, may be forfeited to the United States pursuant to a civil proceeding under this section. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a vessel or cargo for violation of the customs laws, and the disposition of the vessel, cargo, or proceeds from the sale thereof and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as such provisions of law are applicable and not inconsistent with this Act.

(b) JURISDICTION OF COURTS.—Any district court of the United States which has jurisdiction under section 307 shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d).

(d) PROCEDURE.—Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 307 shall stay the execution of such process, or discharge any property seized pursuant to such process, upon the receipt of a satisfactory bond or other security from any person subject to section 301 claiming such property. Such bond or other security shall be conditioned upon such person (1) delivering such property to the appropriate court upon order thereof, without any impairment of its value; or (2) paying the monetary value of such property pursuant to any order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all hard mineral resources found on board a vessel subject to the provisions of sections 304 and 305 which is seized in connection with an act prohibited by section 301 were recovered, processed, or retained in violation of this Act.

SEC. 307. JURISDICTION OF COURTS.

The district of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. These courts may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

SEC. 308. REGULATIONS.

(a) PROPOSED REGULATIONS.—Not later than 270 days after the date of enactment of this Act, the Administrator shall solicit the views of the agency heads referred to in section 109(b) and of interested persons, and issue, in accordance with section 553 of title 5, United States Code, such proposed regulations as are required by or are necessary and appropriate to implement titles I and II and this title. The Administrator shall hold at least one public hearing on such proposed regulations.

(b) FINAL REGULATIONS.—Not later than 180 days after the date on which proposed regulations are issued pursuant to subsection (a), the Administrator shall solicit the views of the agency heads referred to in section 109(b) and of interested persons, consider the comments received during the public hearing required in subsection (a) and any written comments on the proposed regulations received by the Administrator, and issue, in accordance with section 553 of title 5, United States Code, such regulations as are required by or are necessary and appropriate to implement titles I and II and this title.

(c) AMENDMENTS.—The Administrator may at any time amend regulations issued pursuant to subsection (b) as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources within the meaning of section 110, protection of the environment, and the safety of life and property at sea. Such amended regulations shall apply to all explora-

tion or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this Act; except that any such amended regulations which provide for conservation of natural resources shall apply to exploration or commercial recovery conducted under an existing license or permit during the present term of such license or permit only if the Administration determines that such amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulation under this subsection shall be made on the record after an opportunity for an agency hearing.

(d) CONSISTENCY.—This Act and the regulations issued under this Act shall not be deemed to supersede any other Federal laws or treaties or regulations issued thereunder.

SEC. 309. BIENNIAL REPORT.

(d) SUBMISSION ON REPORTS.—The Administrator shall submit to the Congress—

(1) not later than December 31, 1981, a report on the administration of this Act during the period beginning on the date of enactment of this Act and ending September 30, 1981; and

(2) not later than December 31 of each second year thereafter, a report on the administration of this Act during the two fiscal years preceding the date on which the report is required to be filed.

(b) CONTENTS.—Each report filed pursuant to subsection (a) shall include, but be limited to, the following information with respect to the reporting period:

(1) Licenses and permits issued, modified, revised, suspended, revoked, relinquished, surrendered, or transferred, denials of certifications of applications for the issuance or transfer of licenses and permits; denials or issuance or transfer of licenses and permits; and required suspensions and modifications of activities under licenses and permits.

(2) A description and evaluation of the exploration and commercial recovery activities undertaken, including, but not limited to, information setting forth the quantities of hard mineral resources recovered and the disposition of such resources.

(3) An assessment of the environmental impacts, including a description and estimate of any damage caused by any adverse effects on the quality of the environment resulting from such activities.

(4) The number and description of all civil and criminal proceedings, including citations, instituted under this title, and the current status of such proceedings.

(5) Such recommendations as the Administrator deems appropriate for amending this Act to further fulfill its purposes.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator, for purposes of carrying out the provisions of titles I and II and this title, such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982, and $1,469,000 for the fiscal year ending September 30, 1983, $2,150,000 for the fiscal year ending September 30, 1984, $1,500,000 for each of the

fiscal years ending September 30, 1985 and September 30, 1986, and $1,500,000 for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989.[2]

SEC. 311. SEVERABILITY.

If any provision of this Act or any application thereof is held invalid, the validity of the remainder of the Act, or any other application, shall not be affected thereby.

TITLE IV—TAX

SEC. 401. SHORT TITLE.

This title may be cited as the "Deep Seabed Hard Mineral Removal Tax Act of 1979".

SEC. 402. IMPOSITION OF TAX ON REMOVAL OF HARD MINERAL RESOURCES FROM DEEP SEABED.

(a) GENERAL RULES.—Chapter 36 of the Internal Revenue Code of 1954 (relating to certain other excise taxes) is amended by adding at the end thereof the following new subchapter:

"Subchapter F—Tax on Removal of Hard Mineral Resources From Deep Seabed

"Sec. 4495. Imposition of tax.
"Sec. 4496. Definitions.
"Sec. 4497. Imputed value.
"Sec. 4498. Termination.

"SEC. 4495. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any removal of a hard mineral resource from the deep seabed pursuant to a deep seabed permit.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any removal shall be 3.75 percent of the imputed value of the resource so removed.

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the person to whom the deep seabed permit is issued.

"(d) TIME FOR PAYING TAX.—The time for paying the tax imposed by subsection (a) shall be the time prescribed by the Secretary by regulations. The time so prescribed with respect to any removal shall be not earlier than the earlier of—

"(1) the commercial use of, or the sale or disposition of, any portion of the resource so removed, or

"(2) the day which is 12 months after the date of the removal of the resource.

"SEC. 4496. DEFINITIONS.

"(a) DEEP SEABED PERMIT.—For purposes of this subchapter, the term 'deep seabed permit' means a permit issued under title I of the Deep Seabed Hard Minerals Resources Act.

"(b) HARD MINERAL RESOURCE.—For purposes of this subchapter, the term 'hard mineral resource' means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which

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[2] Public Law 97-416 (96 Stat. 2084), added the authorizations for fiscal years 1983 and 1984. Sec. 403 of Public Law 98-623 (98 Stat. 3408) added the authorizations for fiscal years 1985 and 1986. Public Law 99-507, 100 Stat. 1847, added the authorizations for fiscal years 1987, 1988, and 1989.

contain one or more minerals, at least one of which is manganese, nickel, cobalt, or copper.

"(c) DEEP SEABED.—For purposes of this subchapter, the term 'deep seabed' means the seabed, and the subsoil thereof to a depth of 10 meters lying seaward of, and outside—

"(1) the Continental Shelf of any nation; and

"(2) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States.

"(d) CONTINENTAL SHELF.—For purposes of this subchapter, the term 'Continental Shelf' means—

"(1) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas; and

"(2) the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

"SEC. 4497. IMPUTED VALUE.

"(a) IN GENERAL.—For purposes of this subchapter, the term 'imputed value' means, with respect to any hard mineral resources, 20 percent of the fair market value of the commercially recoverable metals and minerals contained in such resource. Such fair market value shall be determined—

"(1) as of the date of the removal of the hard mineral resource from the deep seabed; and

"(2) as if the metals and minerals contained in such resource were separated from such resource and were in the most basis form for which there is a readily ascertainable market price.

"(b) COMMERCIAL RECOVERABILITY.—

"(1) MANGANESE, NICKEL, COBALT, AND COPPER.—For purposes of subsection (a), manganese, nickel, cobalt, and copper shall be treated as commercially recoverable.

"(2) MINIMUM QUANTITIES AND PERCENTAGES.—The Secretary may by regulations prescribe for each metal or mineral quantities or percentages below which the metal or mineral shall be treated as not commercially recoverable.

"(c) SUSPENSION OF TAX WITH RESPECT TO CERTAIN METALS AND MINERALS HELD FOR LATER PROCESSING.—

"(1) ELECTION.—The permittee may, in such manner and at such time as may be prescribed by regulations, elect to have the application of the tax suspended with respect to one or more commercially recoverable metals or minerals in the resource which the permittee does not intend to process within one year of the date of extraction. Any metal or mineral affected by such election shall not be taken into account in determining the imputed value of the resource at the time of its removal from the deep seabed. Any suspension under this paragraph with respect to a metal or mineral shall be permanent unless there is a redetermination affecting such metal or mineral under paragraph (2).

"(2) LATER COMPUTATION OF TAX.—If the permittee processes any metal or mineral affected by the election under paragraph (1), or if he sells any portion of the resource containing such a metal or mineral, then the amount of the tax under section 4495 shall be redetermined as if there had been no suspension under paragraph (1) with respect to such metal or mineral. In any such case there shall be added to the increase in tax determined under the preceding sentence an amount equal to the interest (at rates determined under section 6621) on such increase for the period from the date prescribed for paying the tax on the resources (determined under section 4495(d) to the date of the processing or sale.

"(d) DETERMINATIONS OF VALUE.—All determinations of value necessary for the application of this subchapter shall be made by the Secretary (after consultation with other appropriate Federal officials) on the basis of the best available information. Such determinations shall be made under procedures established by the Secretary by regulations.

"SEC. 4498. TERMINATION.

"(a) GENERAL RULE.—The tax imposed by section 4495 shall not apply to any removal from the deep seabed after the earlier of—

"(1) the date on which an international deep seabed treaty takes effect with respect to the United States, or

"(2) the date 10 years after the date of the enactment of this subchapter.

"(b) INTERNATIONAL DEEP SEABED TREATY.—For purposes of subsection (a), the term 'international deep seabed treaty' means any treaty which—

"(1) is adopted by a United Nations Conference on the Law of the Sea, and

"(2) requires contributions to an international fund for the sharing of revenues from deep seabed mining.".

(b) CLERICAL AMENDMENTS.—The table of subchapters for chapter 36 of such Code is amended by adding at the end thereof the following new item:

"SUBCHAPTER F. Tax on removal of hard mineral resources from deep seabed."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1980.

SEC. 403. ESTABLISHMENT OF DEEP SEABED REVENUE SHARING TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Deep Seabed Revenue Sharing Trust Fund" ((hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

(1) IN GENERAL.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury to be equivalent to the amounts of the taxes received in the

Treasury under section 4495 of the Internal Revenue Code of 1954.

(2) METHOD OF TRANSFER.—The amounts appropriated by paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amount required to be transferred.

(c) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and to report to the Congress for the fiscal year ending September 30, 1980, and each fiscal year thereafter on the financial condition and the results of the operations of the Trust Fund during the preceding year and on its expected condition and operations during the fiscal year and the next five fiscal years after the fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—

(A) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund may be sold by the Secretary at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) EXPENDITURES FROM TRUST FUND.—If an international deep seabed treaty is ratified by and in effect with respect to the United States on or before the date ten years after the date of the enactment of this Act, amounts in the Trust Fund shall be available, as provided by appropriations Acts, for making contributions required under such treaty for purposes of the sharing among nations of the revenues from deep seabed mining. Nothing in this subsection shall be deemed to authorize any program or other activity not otherwise authorized by law.

(e) USE OF FUNDS.—If an international deep seabed treaty is not in effect with respect to the United States on or before the date ten years after the date of the enactment of this Act, amounts in the Trust Fund shall be available for such purposes as Congress may hereafter provide by law.

(f) INTERNATIONAL DEEP SEABED TREATY.—For purposes of this section, the term "international deep seabed treaty" has the meaning given to such term by section 4498(b) of the Internal Revenue Code of 1954.

SEC. 404. ACT NOT TO AFFECT TAX OR CUSTOMS OR TARIFF TREATMENT OF DEEP SEABED MINING.

Except as otherwise provided in section 402, nothing in this Act shall affect the application of the Internal Revenue Code of 1954. Nothing in this Act shall affect the application of the customs or tariff laws of the United States.

2. Marine Pollution

a. Act To Prevent Pollution From Ships [1]

Public Law 96-478 [H.R. 6665], 94 Stat. 2297, approved October 21, 1980, as amended by Public Law 100-220 [H.R. 3674], 101 Stat. 1458, approved December 29, 1987

AN ACT To implement the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act to Prevent Pollution from Ships".

Sec. 2. (a) [2] Unless the context indicates otherwise, as used in this Act—

(1) "MARPOL Protocol" means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;

(2) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States; [3]

(3) "discharge" and "garbage" [4] and "harmful substance" and "incident" shall have the meanings provided in the Convention;

(4) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

(5) "operator" means—

(a) in the case of a ship, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

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[1] 33 U.S.C. 1901-1911.

[2] Sec. 2 was amended by sec. 2101 of Public Law 100-220; 101 Stat. 1460, which inserted an "(a)" after "Sec. 2", and amended the text of subsec. (a)(1) (as redesignated) which previously read as follows:

"(1) 'MARPOL Protocol' means the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London on February 17, 1978. This Protocol incorporates and modifies the International Convention for the Prevention of Pollution from Ships, 1973, done at London on November 2, 1973;".

[3] The words to this point beginning with "Annexes I . . .", were added by sec. 2101(3) of Public Law 100-220; 101 Stat. 1460.

[4] The words "and 'garbage' " were added by sec. 2101(4) of Public Law 100-220; 101 Stat. 1460.

(b) in the case of a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

(6) "person" means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

(7) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(8) "ship" means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-p)pelled or not, and fixed or floating platforms; and

(9) "terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b) [5] For purposes of this Act, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

Sec. 3. (a) [6] This Act shall apply—

(1) to a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

(2) with respect to Annexes I and II to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters of the United States;

(3) with respect to the requirements of Annex V to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters or the exclusive economic zone of the United States; and

(4) with respect to regulations prescribed under section 6 of this Act, any port or terminal in the United States

(b)(1) Except as provided in paragraph (2), this Act shall not apply to—

(A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

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[5] Subsec. (b) was added by sec. 2101(5) of Public Law 100-220; 101 Stat. 1461.

[6] Secs. 3(a), 3(b), and 3(c) were amended and restated by secs. 2102(a), (b), and (c) of Public Law 100-220; 101 Stat. 1461. Previously, secs. 3(a) to 3(c) read as follows:

"Sec. 3. (a) This Act applies to—

"(1) a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

"(2) a ship registered in or of the nationality of a country party to the MARPOL Protocol, or one operated under the authority of a country party to the MARPOL Protocol, while in the navigable waters of the United States; and

"(3) a ship registered in or of the nationality of a country not a party to the MARPOL Protocol, under subsection (c) of this section, while in the navigable waters of the United States.

"(b) This Act does not apply to—

"(1) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

"(2) any other ship specifically excluded by the MARPOL Protocol.

"(c) The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol to ensure that their treatment is not more favorable than that accorded ships of parties to the MARPOL Protocol.".

(B) any other ship specifically excluded by the MARPOL Protocol.

(2)(A) Notwithstanding any provision of the MARPOL Protocol, and subject to subparagraph (B) of this paragraph, the requirements of Annex V to the Convention shall apply after 5 years after the effective date of this paragraph to a ship referred to in paragraph (1)(A).

(B) This paragraph shall not apply during time of war or declared national emergency.

(c) The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol, including regulations conforming to and giving effect to the requirements of Annex V as they apply under subsection (a) of section 3, to ensure that their treatment is not more favorable than that accorded ships to parties to the MARPOL Protocol.

(d) The heads of Federal departments and agencies shall prescribe standards applicable to ships excluded from this Act by subsection (b)(1) of this section and for which they are responsible. Standards prescribed under this subsection shall ensure, so far as is reasonable and practicable without impairing the operations or operational capabilities of such ships, that such ships act in a manner consistent with the MARPOL Protocol.

Sec. 4. (a) Unless otherwise specified in this Act,[7] the Secretary shall administer and enforce the MARPOL Protocol and this Act. In the administration and enforcement of the MARPOL Protocol and this Act, Annexes I and II of the Convention apply [7] only to seagoing ships.

(b)(1) [8] The Secretary shall prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol or this Act.

(2) [8] The Secretary of the department in which the Coast Guard is operating shall—

(A) within 1 year after the effective date of this paragraph, prescribe regulations which—

(i) require certain ships described in section 3(a)(1) to maintain refuse record books and shipboard management plans, and to display placards which notify the crew and passengers of the requirements of Annex V to the Convention; and

(ii) specify the ships described in section 3(a)(1) to which the regulations apply;

(B) seek an international agreement or international agreements which apply requirements equivalent to those described in subparagraph (A)(i) to all vessel subject to Annex V to the Convention; and

(C) within 2 years after the effective date of this paragraph, report to the Congress—

(i) regarding activities of the Secretary under subparagraph (B); and

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[7] Sec. 2107(a) of Public Law 100-220; 101 Stat. 1464, substituted the words "in this Act" in lieu "herein", and substituted "Convention apply" in lieu of "MARPOL Protocol shall be applicable".

[8] Sec. 4(b) was amended by sec. 2107 of Public Law 100-220; 101 Stat. 1464, which inserted "(1)" after "(b)", and added a new subpar. "(2)".

(ii) if the Secretary has not obtained agreements pursuant to subparagraph (B) regarding the desirability of applying the requirements described in subparagraph (A)(i) to all vessels described in section 3(a) which call at United States ports.

(c) The Secretary may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this Act, or the regulations thereunder.

Sec. 5. (a) The Secretary shall designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol. A certificate required by the MARPOL Protocol shall not be issued to a ship which is registered in or of the nationality of a country which is not a party to the MARPOL Protocol.

(b) A certificate issued by a country which is a party to the MARPOL Protocol has the same validity as a certificate issued by the Secretary under the authority of the MARPOL Protocol.

(c) A ship required by the MARPOL Protocol to have a certificate—

(1) shall carry a valid certificate onboard in the manner prescribed by the authority issuing the certificate; and

(2) is subject to inspection while in a port or terminal under the jurisdiction of the United States.

(d) An inspection conducted under subsection (c)(2) of this section is limited to verifying whether or not a valid certificate is onboard, unless clear grounds exist which reasonably indicate that the condition of the ship or its equipment does not substantially agree with the particulars of its certificate. This section shall not limit the authority of any official or employee of the United States under any other treaty, law, or regulation to board and inspect a ship or its equipment.

(e) In addition to the penalties prescribed in section 9 of the Act, a ship required by the MARPOL Protocol to have a certificate—

(1) which does not have a valid certificate onboard; or

(2) whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate onboard;

shall be detained by order of the Secretary at the port or terminal where the violation is discovered until, in the opinion of the Secretary, the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment. The detention order may authorize the ship to proceed to the nearest appropriate available shipyard rather than remaining at the place where the violation was discovered.

(f) If a ship is under a detention order under this section, the Secretary of the Treasury, upon the request of the Secretary, may refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or

(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313) or section 442 of the Tariff Act of 1930, as amended (19 U.S.C. 1443).

89-453 O - 89 - 4

(g) A person whose ship is subject to a detention order under this section may petition the Secretary, in the manner prescribed by regulation, to review the detention order. Upon receipt of a petition under this subsection, the Secretary shall affirm, modify, or withdraw the detention order within the time prescribed by regulation.

(h) A ship unreasonably detained or delayed by the Secretary acting under the authority of this Act is entitled to compensation for any loss or damage suffered thereby.

Sec. 6. (a)(1) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall establish regulations setting criteria for determining the adequacy of a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances [9] and shall establish procedures whereby a person in charge of a port or terminal may request the Secretary to certify that the port's or terminal's facilities for receiving the residues and mixtures containing oil or noxious liquid substance from seagoing ships are adequate.

(2) [10] The Secretary, after consulting with appropriate Federal agencies, shall establish regulations setting criteria for determining the adequacy of reception facilities for garbage at a port or terminal, and stating such additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that such facilities are available, for receiving garbage in accordance with those regulations.

(b) In determining the adequacy of reception facilities required by the MARPOL Protocol at a port or terminal, and in establishing regulations under subsection (a) of this section,[11] the Secretary may consider, among other things, the number and types of ships or [11] seagoing ships using the port or terminal, including their principal trades.

(c)(1) [12] If reception facilities of a port or terminal meet the requirements of Annex V to the Convention and the regulations prescribed under subsection (a)(1), the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant.

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[9] Sec. 6(a) was amended by sec. 2103 of Public Law 100-220; 101 Stat. 1461, which redesignated sec. "6(a)" as sec. "6(a)(1)", and amended the text of subsec. (a)(1) by substituting the words to this point beginning with "a port's or . . . " in lieu of "reception facilities of a port or terminal".

[10] Par. 2 was added by sec. 2103(a) of Public Law 100-220; 101 Stat. 1461.

[11] Sec. 6(b) was amended by sec. 2103(b) of Public Law 100-220; 101 Stat. 1462, which added the text "and in establishing regulations under subsection (a) of this section," after the word "terminal" the first time it appears, and also added "ships or" before "seagoing".

[12] Sec. 6(c) was amended and restated by sec. 2103(c) of Public Law 100-220; 101 Stat. 1462. Previously, sec. 6(c) read as follows:

"(c) If, upon inspection, reception facilities of a port or terminal are adequate to meet the requirements of the MARPOL Protocol and the regulations established hereunder, the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant. A certificate issued under this subsection—

"(1) is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and

"(2) shall be available for inspection upon the request of the master, other person in charge, or agent of a seagoing ship using or intending to use the port or terminal.

"The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by him in the manner prescribed by regulation.".

(2) If reception facilities of a port or terminal meet the requirements of Annex V to the Convention and the regulations prescribed under subsection (a)(2), the Secretary may, after consultation with appropriate Federal agencies, issue a certificate to that effect to the person in charge of the port or terminal.

(3) A certificate issued under this subsection—

(A) is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and

(B) shall be available for inspection upon the request of the master, other person in charge, or agent of a ship using or intending to use the port or terminal.

(4) The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by the Secretary in the manner prescribed by regulation.

(d) The Secretary shall periodically cause to be published in the Federal Register a list of the ports or terminals holding a valid certificate issued under this section.

(e)(1) [13] Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention to retain onboard while at sea, residues and mixtures containing oil or noxious liquid substances, if—

(A) the port or terminal is one required by Annexes I and II of the Convention or regulations hereunder to have adequate reception facilities; and

(B) the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(2) The Secretary may deny the entry of a ship to a port or terminal required by regulations issued under this section to provide adequate reception facilities for garbage if the port or terminal is not in compliance with those regulations.

(f) The Secretary is authorized to conduct surveys of existing reception facilities in the United States to determine measures needed to comply with MARPOL Protocol.

Sec. 7. (a) As soon as he has knowledge of an incident, the master or other person in charge of a ship shall report it to the Secretary in the manner prescribed by Article 8 of the Convention.

(b) Upon receipt of the report of an incident involving a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the Secretary shall take the action required by Article 8 of the Convention.

Sec. 8. (a) It is unlawful to act in violation of the MARPOL Protocol, this Act, or the regulations issued thereunder. The Secretary shall cooperate with other parties to the MARPOL Protocol in the detection of violations and in enforcement of the MARPOL Protocol. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring, and shall establish adequate procedures for reporting violations and accumulating evidence.

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[13] Sec. 6(e) was amended by sec. 2103(d) of Public Law 100–220; 101 Stat. 1462, which inserted "(1)" after "(e)"; redesignated "(1)" and "(2)" as "(A)" and "(B)"; substituted "Annexes I and II of the Convention" in lieu of "the MARPOL Protocol"; and added a new subpar. "(2)".

(b) Upon receipt of evidence that a violation has occurred, the Secretary shall cause the matter to be investigated. In any investigation under this section the Secretary may issue subpenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Upon completion of the investigation, the Secretary shall take the action required by the MARPOL Protocol and whatever further action he considers appropriate under the circumstances. If the initial evidence was provided by a party to the MARPOL Protocol, the Secretary, acting through the Secretary of State, shall inform that party of the action taken or proposed.

(c)(1) [14] This subsection applies to inspection relating to possible violations of Annex I or Annex II to the Convention by any seagoing ship referred to in section 3(a)(2) of this Act.

(2) [14] While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol applies may be inspected by the Secretary—

(A) [14] to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL Protocol or this Act; or

(B) [14] to comply with a request from a party to the MARPOL Protocol for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol. An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. The [15] Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d)(1) [16] The Secretary may inspect a ship referred to in section 3(a)(3) of this Act to verify whether the ship has disposed of garbage in violation of Annex V to the Convention or this Act.

(2) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 9 of this Act.

(e)(1) [16] The Secretary may inspect at any time a ship of United States registry or nationality or operating under the authority of the United States to which the MARPOL Protocol applies to verify

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[14] Sec. 8(c) was amended by sec. 2104(a) of Public Law 100–220; 101 Stat. 1462, which added a new par. "(1)"; redesignated par. "(c)" as "(c)(2)"; and redesignated former subpars. "(1)" and "(2)" as "(A)" and "(B)".

[15] The words "If a report made under this subsection involves a ship, other than one of United States registry or nationality or one operated under the authority of the United States, the" which previously appeared at this point were struck out by sec. 2104(a) of Public Law 100–220; 101 Stat. 1462, which substituted in lieu thereof the word "The".

[16] Sec. 2104(b) of Public Law 100–220; 101 Stat. 1463, redesignated former subsec. "(d)" as subsec. "(f)" and added new subsecs. "(d)" and "(e)".

whether the ship has discharged a harmful substance or disposed of garbage in violation of that Protocol or this Act.

(2) If an inspection under this subsection indicates that a violation of the MARPOL Protocol has occurred, the Secretary may undertake enforcement action under section 9 of this Act.

(f) [16] Remedies and requirements of this Act supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this Act. Nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this Act.

Sec. 9. (a) A person who knowingly violates the MARPOL Protocol, this Act, or the regulations issued thereunder shall, for each violation, be fined not more than $50,000 or be imprisoned for not more than 5 years, or both. In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction.[17]

(b) A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol, this Act, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation; or

(2) make a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol, this Act, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require. An amount equal to not more than ½ of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.[18]

(c) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment or which has been assessed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(d) A ship operated in violation of the MARPOL Protocol, this Act, or the regulations thereunder is liable in rem for any fine imposed under subsection (a) or civil penalty assessed pursuant to subsection (b), and may be proceeded against in the United States district court of any district in which the ship may be found.

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[17] The second sentence was added by sec. 2105(a)(1) of Public Law 100-220; 101 Stat. 1463.

[18] This last sentence was added by sec. 2105(a)(2) of Public Law 100-220; 101 Stat. 1463.

(e) If any ship subject to the MARPOL Protocol or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States as amended (46 U.S.C. 91); or

(2) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. 313) or section 443 of the Tariff Act 1930, as amended (19 U.S.C. 1443).

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

(f) Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol, or one operated under the authority of a country party to the MARPOL Protocol, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the ships of the ship's registry or nationality, or under whose authority the ship is operating [19] for appropriate action, rather than taking the actions required or authorized by this section.

Sec. 10. (a) A proposed amendment to the MARPOL Protocol received by the United States from the Secretary-General of the International Maritime Organization [20] pursuant to Article VI of the MARPOL Protocol, may be accepted on behalf of the United States by the President following the advice and consent of the Senate, except as provided for in subsection (b) of this section.

(b) A proposed amendment to Annex I, II, or V to the Convention, appendices to those Annexes, or Protocol I of the Convention,[21] received by the United States from the Secretary-General of the International Maritime Organization [20] pursuant to Article VI of the MARPOL Protocol, may be the subject of appropriate action on behalf of the United States by the Secretary of State following consultation with the Secretary, who shall inform the Secretary of State as to what action he considers appropriate at least 30 days prior to the expiration of the period specified in Article VI of the MARPOL Protocol during which objection may be made to any amendment received.

(c) Following consultation with the Secretary, the Secretary of State may make a declaration that the United States does not accept an amendment proposed pursuant to Article VI of the MARPOL Protocol.

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[19] The words to this point beginning with "to the government" were inserted in lieu of the words "to that country" which were struck out by sec. 2105(b) of Public Law 100-220; 101 Stat. 1463.

[20] Sec. 2106 of Public Law 100-220; 101 Stat. 1463, substituted the "International Maritime Organization" in lieu of the "Inter-Governmental Maritime Consultative Organization".

[21] The words to this point beginning with "Annex I" were substituted in lieu of "Annex I or II, appendices to the Annexes, or Protocol I of the MARPOL Protocol," by sec. 2106(2) of Public Law 100-220; 101 Stat. 1463.

Sec. 11. (a) Except as provided in subsection (b) of this section, any person having an interest which is, or can be, adversely affected, may bring an action on his own behalf—

(1) against any person alleged to be in violation of the provisions of this Act, or regulations issued hereunder;

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary;

(3) against the Secretary of the Treasury where there is alleged a failure of the Secretary of the Treasury to take action under section 9(e) of this Act.

(b) No action may be commenced under subsection (a) of this section—

(1) prior to 60 days after the plaintiff has given notice, in writing and under oath, to the alleged violator, the Secretary concerned, and the Attorney General; or

(2) if the Secretary has commenced enforcement or penalty action with respect to the alleged violation and is conducting such procedures diligently.

(c) Any suit brought under this section shall be brought—

(1) in a case concerning an onshore facility or port, in the United States district court for the judicial district where the onshore facility or port is located;

(2) in a case concerning an offshore facility or offshore structure under the jurisdiction of the United States, in the United States district court for the judicial district nearest the offshore facility or offshore structure;

(3) in a case concerning a ship, in the United States district court for any judicial district wherein the ship or its owner or operator may be found; or

(4) in any case, in the District Court for the District of Columbia.

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party including the Federal Government.

(e) In any action brought under this section, if the Secretary or Attorney General are not parties of record, the United States, through the Attorney General, shall have the right to intervene.

Sec. 12. On the effective date of this Act—

(a) the Oil Pollution Act, 1961, as amended (75 Stat. 402; 33 U.S.C. 1001 *et seq.*) is repealed. Any criminal or civil penalty proceeding under that Act for a violation which occurred prior to the effective date of this Act may be initiated or continued to conclusion as though that Act had not been repealed; and

(b) the Oil Pollution Act Amendments of 1973 (87 Stat. 428, Public Law 93-119) are repealed.

Sec. 13. (a) Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a) is amended as follows—

(1) by amending subparagraph (C) of paragraph (2) by deleting the word "or" in clause (ii), by deleting the period at the end of clause (iii) and inserting "; or"; and by adding a new clause (iv) as follows:

"(iv) designated as a noxious liquid substance under Annex II of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973.";

(2) by amending subparagraph (E) of paragraph (3) to read as follows:

"(E) which is constructed or adapted to carry, or which carries, oil or any hazardous materials in bulk as cargo or in residue.".

(b) The Federal Water Pollution Control Act, as amended, is further amended in the first sentence of section 311(b)(3), after the words "except (A) in the case of such discharges", by striking the words "of oil"; and by striking the phrase "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended" and inserting in lieu thereof the phrase "the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973".

Sec. 14. (a) Except as provided in subsection (b) of this section, this Act is effective upon the date of enactment, or on the date the MARPOL Protocol becomes effective as to the United States, whichever is later.[22]

(b) The Secretary and the heads of Federal departments shall have the authority to issue regulations, standards, and certifications under sections 3(c), 3(d), 4(b), 5(a), 6(a), 6(c), and 6(f) effective on the date of enactment of this Act. Section 13(a)(2) is effective upon the date of enactment of this Act.

(c) Any rights or liabilities existing on the effective date of this Act shall not be affected by this enactment. Any regulations or procedures promulgated or effected pursuant to the Oil Pollution Act, 1961, as amended, remain in effect until modified or superseded by regulations promulgated under the authority of the MARPOL Protocol or this Act.

Sec. 15. Nothing in this Act shall be construed as limiting, diminishing, or otherwise restricting any of the authority of the Secretary under the Port and Tanker Safety Act of 1978 (Public Law 95-474).

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Sec. 17. Any action taken under this Act shall be taken in accordance with international law.[23]

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[22] This Act became, except as provided in Sec. 14(b), effective on Oct. 2, 1983, at which time the MARPOL Protocol became effective as to the United States.

[23] Sec. 17 was added by sec. 2108 of Public Law 100-220; 101 Stat. 1464.

b. Intervention on the High Seas Act

Public Law 93-248 [S. 1070], 88 Stat. 8, approved February 5, 1974, as amended by Public Law 95-302 [S. 2380], 92 Stat. 344, approved June 26, 1978; and by Public Law 97-164 [H.R. 4482], 96 Stat. 25 at 49, approved April 2, 1982

AN ACT To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intervention on the High Seas Act".

Sec. 2.[2] As used in this Act—

(1) "a substance other than convention oil" means those oils, noxious substances, liquefied gases, and radioactive substances—

(A) enumerated in the protocol, or

(B) otherwise determined to be hazardous under section 4(a);

(2) "convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto;

(3) "convention oil" means crude oil, fuel oil, diesel oil, and lubricating oil;

(4) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(5) "ship" means—

(A) a seagoing vessel of any type whatsoever, and

(B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

(6) "protocol" means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil, 1973, including annexes thereto; and

(7) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

Sec. 3.[3] Whenever a ship collision, standing, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a

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[1] See boxnote page 2.

[2] 33 U.S.C. 1471. Sec. 1(1) of Public Law 95-302 (92 Stat. 344) comprehensively amended and restated sec. 2. As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the Protocol referred to in par. (6) became effective for the United States.

[3] 33 U.S.C. 1472.

grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by convention oil or of the sea or atmosphere by a substance other than convention oil [4] which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 10, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the convention, the protocol [5] and this Act, to prevent, mitigate, or eliminate the danger.

Sec. 4.[6] (a) [7] The Secretary, after consultation with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, shall determine when a substance other than those enumerated in the protocol is liable to create a hazard to human health, to harm living resources, to damage amenities, or to interfere with other legitimate uses of the sea.

(b) [7] In determining whether there is grave and imminent danger or major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States, directly threatened or affected including but not limited to, human health,[8] fish, shellfish, and other living marine resources, wildlife, coastal zone, and estuarine activities, and public and private shorelines and beaches.

Sec. 5.[9] Upon a determination under section 3 of this Act of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

Sec. 6.[10] Before taking any measure under section 5 of this Act, the Secretary shall—

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[4] Sec. 1(2)(A) of Public Law 95-302 (92 Stat. 344) added the phrase "convention oil or of the sea or atmosphere by a substance other than convention oil" in lieu of the word "oil". As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[5] Sec. 1(2)(B) of Public Law 95-302 (92 Stat. 344) added the words "convention, the protocol" in lieu of the word "Convention". As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[6] 33 U.S.C. 1473.

[7] Sec. 1(3) of Public Law 95-302 (92 Stat. 344) designated the existing text of sec. 4 as subsec. (b) and added a new subsec. (a). As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[8] Sec. 1(3) of Public Law 95-302 (92 Stat. 344) added the words "human health,". As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the Protocol referred to in sec. 2(6) of this Act became effective for the United States.

[9] 33 U.S.C. 1474.

[10] 33 U.S.C. 1475.

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag countries of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons, known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

Sec. 7.[11] In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 6 of this Act or without the continuation of consultations already begun.

Sec. 8.[12] (a) Measures directed or conducted under this Act shall be proportionate to the damage, actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are proportionate to the damage the Secretary shall, among other things consider—

(1) the extent and probability of imminent damage if those measures are not taken;

(2) the likelihood of effectiveness of those measures; and

(3) the extent of the damage which may be caused by those measures.

Sec. 9.[13] In the direction and conduct of measures under this Act the Secretary shall use his best endeavors to—

(1) assure the avoidance of risk to human life;

(2) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and

(3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

Sec. 10.[14] (a) The United States shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in section 3.

(b) Actions against the United States seeking compensation for any excessive measures may be brought in the United States Claims Court,[15] in any district court of the United States, and in those courts enumerated in section 460 of title 28, United States Code. For purposes of this Act, American Samoa shall be included within the judicial district of the District Court of the United

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[11] 33 U.S.C. 1476.
[12] 33 U.S.C. 1477.
[13] 33 U.S.C. 1478.
[14] 33 U.S.C. 1479.
[15] Reference to the United States Claims Court was substituted in lieu of a reference to the United States Court of Claims by sec. 161(6) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49)

States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

(c) [16] With respect to intervention for a substance identified pursuant to section 4(a), the United States has the burden of establishing that, under the circumstances present at the time of the intervention, the substance could reasonably pose a grave and imminent danger analogous to that posed by a substance enumerated in the protocol.

Sec. 11.[17] The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative organization, and persons affected by measures taken under this Act.

Sec. 12.[18] (a) Any person who—

(1) willfully violates a provision of this Act or a regulation issued thereunder; or

(2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this Act; or

(3) willfully obstructs any person who is acting in compliance with an order or direction under this Act, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(b) In a criminal proceeding for an offense under paragraph (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction or that he had reasonable cause to believe that compliance would have resulted in serious risk to human life.

Sec. 13.[19] (a) The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in article III of the Convention and article II of the protocol and may propose amendments to the list of substances other than convention oil in accordance with article III of the protocol.[20]

(b) The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the convention and the protocol.[21]

(c) [21] The President may accept amendments to the list of substances other than convention oil in accordance with article III of the protocol.

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[16] Sec. 1(4) of Public Law 95-302 (92 Stat. 345) added subsec. (c). As provided in Sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

[17] 33 U.S.C. 1480.

[18] 33 U.S.C. 1481.

[19] 33 U.S.C. 1482.

[20] Sec. 1(5)(A) of Public Law 95-302 (92 Stat. 345) added the words to this point beginning with "and article II of the protocol * * *". As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

[21] Sec. 1(5) of Public Law 95-302 (92 Stat. 345) substituted the word "protocol" in lieu of the words "annexes thereto" in subsec. (b) and added a new subsec. (c). As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

Sec. 14.[22] No measures may be taken under authority of this Act against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service.

Sec. 15.[23] This Act shall be interpreted and administered in a manner consistent with the convention, the protocol,[24] and other international law. Except as specifically provided, nothing in this Act may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable.

Sec. 16.[25] The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this Act.

Sec. 17.[26] The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.

Sec. 18.[27] This Act shall be effective upon the date of enactment, or upon the date the convention becomes effective as to the United States, whichever is later.

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[22] 33 U.S.C. 1483.

[23] 33 U.S.C. 1484.

[24] Sec. 2(6) of Public Law 95-302 (92 Stat. 345) added the words ", the protocol,". As provided in sec. 2 of Public Law 95-302, this amendment did not become effective until March 30, 1983 when the protocol referred to in sec. 2(6) of this Act became effective for the United States.

[25] 33 U.S.C. 1485.

[26] 33 U.S.C. 1486.

[27] 33 U.S.C. 1487.

c. Deepwater Port Act of 1974

Partial Text of Public Law 93-627 [H.R. 10701], 88 Stat. 2126; 22 U.S.C. 1501-1524, approved January 3, 1975

AN ACT To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coast of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act of 1974".

DECLARATION OF POLICY

Sec. 2. (a) It is declared to be the purposes of the Congress in this Act to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

Sec. 3. As used in this Act, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(a)(2) of this Act;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2)(A) or (B);

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*), and sections 73 and 74 of the Act of August 27, 1894, as amended;

(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such licensee; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildfish and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 23. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a "new source" for pur-

poses of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

(11) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

(12) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

(13) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(17) "Secretary" means the Secretary of Transportation;

(18) "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; and

(19) "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

* * * * * * *

MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

Sec. 10. (a) Subject to recognized principles of international law, the Secretary shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with the applicable regulations. The licensee shall pay the cost of such marking.

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense,

the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto.

INTERNATIONAL AGREEMENTS

Sec. 11. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

* * * * * * *

RELATIONSHIP TO OTHER LAWS

Sec. 19. (a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if ex-

tended beyond 3 miles, would encompass the site of the deepwater port.

(c) Except in a situation involving force majeure, a license of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(d) The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this Act, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance this laws applicable to merchandise imported into the customs territory of the United States.

(e) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose.

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) is amended by deleting the words "as of the effective date of this Act" in the first sentence thereof and inserting in lieu thereof the words ", now in effect or hereafter adopted, amended, or repealed".

ANNUAL REPORT BY SECRETARY TO CONGRESS

Sec. 20. Within 6 months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of the Representatives (1) a report on the administration of the Deepwater Port Act during such fiscal year, including all deepwater port development activities; (2) a summary of management, supervision, and enforcement activities; and (3) recommendations to the Congress for such additional legislative authority as may be necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities.

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NEGOTIATIONS WITH CANADA AND MEXICO

Sec. 22. The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreements, and the matters about which more information is needed, together with his recommendations for further action.

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3. North Pacific Fisheries Act of 1954, as amended

Public Law 83-579 [S. 3713], 68 Stat. 698; 16 U.S.C. 1021-1035, approved August 12, 1954, as amended by Public Law 85-114 [S. 2212], 71 Stat. 310, approved July 24, 1957; Public Law 92-471 [H.R. 9501], 86 Stat. 784, approved October 9, 1972; Public Law 95-326 [H.R. 12637], 92 Stat. 399, approved July 28, 1978; Public Law 95-553 [S. 3551], 92 Stat. 2072, approved October 30, 1978; and by Public Law 97-389 [H.R. 3942], 96 Stat. 1949, approved December 29, 1982

AN ACT To give effect to the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, May 9, 1952,[1] and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "North Pacific Fisheries Act of 1954".

Sec. 2. As used in this Act, the term—

(a) [2] "Convention" means the International Convention for the High Seas Fisheries of the North Pacific Ocean with a protocol and annex relating thereto signed at Tokyo, May 9, 1952, as amended by the Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, April 25, 1978.

(b) "Commission" means the International North Pacific Fisheries Commission provided for by article II of the Convention.

(c) "United States Section" means the United States Commissioners to the Commission.

(d) "Convention area" means all waters, other than territorial waters, of the North Pacific Ocean which for the purposes of this Act shall include the adjacent seas.

(e) [3] "Fishery conservation zone" means the fishery conservation zone of the United States established by section 101 [4] of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*).

(f) [3] "Fishing vessel" means—

(1) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

(2) any vessel outfitted to engage in any activity described in paragraph (1); or

(3) any vessel in normal support of any vessel described in paragraph (1) or (2).

(g) [3] "Permit" means a permit issued by the Secretary of State in cooperation with the Secretary under section 13 of this Act.

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[1] 4 UST 380; TIAS 2786; 205 UNTS 65. See boxnote on page 2.

[2] Subsec. (a) was amended and restated by sec. 1(1)(A) of Public Law 95-326 (92 Stat. 399). Former subsec. (a) made references to only the 1952 Convention.

[3] Sec. 1(1)(B) of Public Law 95-326 (92 Stat. 399) struck out subsec. (e) (defining "fishing vessel") and added new subsecs. (e) through (h).

[4] The term "fishery conservation zone", as used in sec. 101 of the Magnuson Fishery Conservation and Management Act of 1976, was replaced with the term "exclusive economic zone", by sec. 101(c)(2) of Public Law 99-659; 100 Stat. 3707.

(h) [3] "Secretary" means the Secretary of Commerce.

Sec. 3.[5] (a) [6] The United States shall be represented on the Commission by not more than four United States Commissioners to be appointed by the President and serve at his pleasure. Each United States Commissioner shall be appointed for a term of office of not to exceed four years, but is eligible for reappointment. Any United States Commissioner may be appointed for a term of less than four years if such appointment is necessary to insure that the terms of office of not more than one Commissioner will expire in any one year. Of the Commissioners, who shall receive no compensation for their services as Commissioners—

(1) one shall be an official of the United States Government;

(2) two shall be residents of the State of Alaska; and

(3) one shall be a resident of the State of Washington.

An individual is not eligible for appointment under paragraph (2) or (3) as a Commissioner unless the individual is knowledgeable or experienced concerning the fisheries covered by the Convention.

(b) The Secretary of State, in consultation with the Secretary of Commerce, may designate from time to time Alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission or of the United States Section or of the Advisory Committee established pursuant to section 4, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

Sec. 4. (a) [7] The United States Section shall appoint an advisory committee of not less than six and not more than twenty-one members and shall fix the terms of office thereof. The members shall be appointed from among—

(1) individuals who are knowledgeable or experienced with respect to the fisheries covered by the Convention; and

(2) officers and employees of the fishery agencies of States the residents of which maintain a substantial fishery in the Convention area;

except that two-thirds of the membership of the committee shall consist of individuals, appointed under paragraphs (1) and (2), who are residents of Alaska.

(b) Any or all members of the advisory committee shall [8] attend all sessions of the Commission except executive sessions.

(c) The advisory committee shall be invited to all nonexecutive meetings of the United States Section and at such meetings shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section.

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[5] Sec. 3 was amended and restated by sec. 108 of Public Law 92-471 (86 Stat. 784).

[6] Subsec. (a) was amended and restated by sec. 1(2)(A) of Public Law 95-326 (92 Stat. 399). Sec. 1(2)(B) of the same act provided that this amendment to subsec. (a) would become effective on Sept. 27, 1978.

[7] Subsec. (a) was amended and restated by sec. 1(3)(A) of Public Law 95-326 (92 Stat. 400).

[8] Public Law 92-471 deleted the word "may" and inserted "shall".

(d) The members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Section, not more than five members of the committee, designated by the committee, shall be paid for transportation expenses and per diem incident to attendance at meetings of the Commission or the United States Section; except that in the case in which—

(1) one member is so designated, such member shall be from among the members representing Alaska;

(2) two or three members are so designated, two members shall be from among those representing Alaska; and

(3) four or five members are so designated, three members shall be from among those representing Alaska.[9]

Sec. 5. [Repealed by Public Law 92-471 (86 Stat. 786).]

Sec. 6.[10] The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article III, section 1 of the Convention.

Sec. 7.[11] (a) The Secretary shall administer and, except to the extent otherwise provided for in this Act, enforce the provisions of the Convention, this Act, and regulations issued under this Act.

(b) In carrying out such functions, the Secretary—

(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating and the United States Section, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the government of any party to the Convention.

(c) The Secretary may adopt regulations which apply only to stocks of fish in the Convention area north of the parallel of north latitude of 48 degrees and 30 minutes, but such regulations shall not apply in the Convention area south of the 49th parallel of north latitude with respect to sockeye salmon (Oncorhynchus nerka) or pink salmon (Oncorhynchus gorbuscha).

Sec. 8.[12] Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

Sec. 9.[13] (a) This Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft

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[9] The words to this point beginning with "On approval by the United States Section * * *" were substituted in lieu of the second sentence in subsec. (d) by sec. 1(3)(B) of Public Law 95-326 (92 Stat. 400).

[10] Sec. 6 was amended and restated by sec. 1(4) of Public Law 95-326 (92 Stat. 400).

[11] Sec. 7, as added by sec. 101 of Public Law 92-471 (86 Stat. 784), was amended and restated by sec. 1(5) of Public Law 95-326 (92 Stat. 400).

[12] Formerly sec. 7 and redesignated as sec. 8 by Public Law 92-471 (86 Stat. 784).

[13] Sec. 9, as added by sec. 102 of Public Law 92-471 (86 Stat. 784), was amended and restated by sec. 1(6) of Public Law 95-326 (92 Stat. 400).

and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency which has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers (hereinafter in this Act referred to as "enforcement officers") to enforce the provisions of the Convention, this Act, and regulations adopted the permits issued under this Act: *Provided,* That any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) Enforcement officers may, within the fishery conservation zone [4]—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 10;

(B) board, and search or inspect, any fishing vessel which is subject to the provisions of the Convention and this Act;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed, in the violation of any provision of the Convention, this Act, or any regulation adopted or permit issued under this Act;

(D) seize any fish (whether found) taken or retained in violation of any provision referred to in subparagraph (C); and

(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act.

(d)(1) Enforcement officers may in the Convention area outside the fishery conservation zone [4] and similar zones of Canada and Japan—

(A) board any fishing vessel of Canada or Japan fishing for or processing anadromous species and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question persons, on board the vessel for the purpose of carrying out the provisions of the Convention, this Act, or any regulation adopted or permit issued under this Act; and

(B) if any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the enforcement officer, detain such vessel or person and further investigate the circumstances if necessary.

If an enforcement officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in subparagraph (A), the officer shall further detain the vessel or person and deliver the vessel or person as promptly as practicable to the authorized officials of the appropriate nation.

(2) When requested by the appropriate authorities of Canada or Japan, as the case may be, an enforcement officer may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary, for the prosecution in Canada or Japan of any violation of the provisions of the Convention or any Canadian or Japanese law relating to the enforcement thereof.

Sec. 10.[14] It is unlawful for any person subject to the jurisdiction of the United States—

(1) to violate any provision of the Convention, this Act, or any regulation adopted or permit issued under this Act;

(2) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this Act, or any regulation or permit referred to in paragraph (1);

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest or detention for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of the Convention or this Act or any regulation adopted or permit issued under this Act;

(6) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such person has committed any act prohibited by this section.

Sec. 11.[15] (a)(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 10 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

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[14] Sec. 10, as added by Public Law 92-471, was amended and restated by sec. 1(7) of Public Law 95-326 (92 Stat. 402).

[15] Sec. 11, as amended by sec. 105 of Public Law 92-471, was amended and restated further by sec. 1(8) of Public Law 95-326 (92 Stat. 402).

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(b)(1) A person is guilty of an offense if he commits any act prohibited by section 10 (1), (3), (4), or (5).

(2) Any offense described in paragraph (1) is punishable by a fine of not more than $50,000, or imprisonment for not more than six months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than ten years, or both.

(c)(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 10 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(2) Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

(A) the disposition of forfeited property;

(B) the proceeds from the sale of forfeited property;

(C) the remission of mitigation of forfeitures; and

(D) the compromise of claims;

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purposed by the Secretary of Commerce.

(4)(A) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 9(c) shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (I) delivering such property to the appropriate court upon order thereof, without any impairment of its value or (II) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 10 were taken or retained in violation of the Convention and this Act.

Sec. 12.[16] (a) There is hereby authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this Act, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners [17] without regard to the

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[16] Sec. 1(9) of Public Law 95-326 (92 Stat. 404) repealed sec. 12 and redesignated sec. 13 as sec. 12.

[17] Public Law 92-247 added the words "or Alternate Commissioners" Secs. 201 and 202 of Public Law 92-247 read as follows:

"TITLE II—ALTERNATE COMMISSIONERS

"SEC. 201. In order to insure appropriate representation at meetings of international fisheries commissions, the Secretary of State, in consultation with the Secretary of Commerce or of the Interior as appropriate may designate from time to time Alternate United States Commissioners to the North Pacific Fur Seal Commission, the Inter-American Tropical Tuna Commission, the International Pacific Halibut Commission, the Great Lakes Fishery Commission, the International Whaling Commission, the Commission for the Conservation of Shrimp in the Eastern Gulf of Mexico, the International Commission for the Conservation of Atlantic Tunas, and any similar commission (other than the International Commission for the Northwest Atlantic Fisheries and the International North Pacific Fisheries Commission) established pursuant to a convention between the United States and other governments. Alternate United States Commissioners may exercise, at any meeting of the respective Commission or of the United States Section thereof, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present. In the event that there are Deputy United States Commissioners pursuant to the convention or statute, such Deputy United States Commission-

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Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b); and

(2) the United States share of the joint expenses of the Commission; provided that the Commissioners shall not, with respect to commitments concerning the United States share of the joint expenses of the Commission, be subject to the provisions of section 262(b) of title 22 of the United States Code insofar as they limit the authority of United States Representatives to international organizations with respect to such commitments.

(b) [18] Such funds as shall be made available to the Secretary for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendation of the United States Section and to carry out other research and observer programs established pursuant to the Convention.

(c) [18] There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of section 14, such sums not to exceed $1,000,000 for fiscal year 1979 and for each of the next two fiscal years.

(d) [18] There are authorized to be appropriated to the Secretary, for purposes of carrying out a sonar censusing project in the Arctic-Yukon-Kuskokwim region of Alaska, not to exceed $500,000 during the period beginning October 1, 1978, and ending September 30, 1981.

Sec. 13.[19] (a) Each Canadian or Japanese fishing vessel which is authorized to fish in the fishery conservation zone [4] pursuant to the Convention shall have on board a registration permit issued under subsection (b).

(b) The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each Canadian or Japanese fishing vessel which is authorized to fish within the fishery conservation zone [4] pursuant to the Convention. Each such permit shall set forth the terms and conditions contained in the Convention that apply with respect to such operations, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall comply with any regulations adopted under section 14(a) of this Act and shall prominently display such, permit in the wheelhouse of such vessel and show it, upon request, to any enforcement officer. The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The

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ers shall have precedence over any Alternate Commissioners so designated pursuant to this title.

"SEC. 202. Alternate United States Commissioners shall receive no compensation for their services. They may be paid travel expenses and per diem in lieu of subsistence at the rates authorize by section 5703 of title 5, United States Code, when engaged in the performance of their duties."

[18] Sec. 1(10) of Public Law 95-326 (92 Stat. 404) struck out subsec. (b) and added new subsecs. (b), (c), and (d). Sec. 2 of Public Law 95-326 provided that while all other amendments to this act became effective on July 28, 1978, the amendments made to sec. 12 (b), (c), and (d) shall be effective Oct. 1, 1978.

[19] Sec. 1 of Public Law 95-326 (92 Stat. 404) redesignated sec. 14 as sec. 16 and added new secs. 13, 14, and 15.

Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(c) Notwithstanding any other provision of law, Canadian and Japanese fishing vessels authorized to fish for anadromous species outside the fishery conservation zone [4] pursuant to the Convention shall not be required to obtain any permit relating to such species.

Sec. 14.[20] (a)(1) The Secretary of Commerce is directed to take such actions as are necessary and appropriate to determine the effect of the Japanese salmon drift gillnet fishery on marine mammal populations, and to reduce or eliminate the incidental taking of marine mammals, particularly Dall's porpoise, by this fishery. Such actions shall include, but not be limited to—

(A) the placement of duly authorized observers of the United States onboard Japanese salmon fishing and research vessels while within the Fishery Conservation Zone, [4] for the purpose of making scientific observations and studies relating to the biology of the Dall's porpoise and the incidental taking of marine mammals, seabirds, and king salmon of North American origin;

(B) the collection of a representative sample of biological material and data on all marine mammals incidentally taken in the fishery; and

(C) the adoption of requirements, by permit conditions or agreement, governing the incidental taking of marine mammals by Japanese salmon fishing vessels within the Fishery Conservation Zone, [4] which will insure that new fishing gear or techniques, or both, are implemented in the North Pacific salmon fishery which will reduce porpoise mortality to the greatest extent practicable.

(2) The introduction of new fishing gear or techniques, or both, in the fishery under paragraph (1) of this subsection shall be accomplished no later than is specified in the following timetable:

(A) 25 per centum of the fleet by the commencement of the 1984 season;

(B) 50 per centum of the fleet by the commencement of the 1985 season;

(C) 75 per centum of the fleet by the commencement of the 1986 season; and

(D) 100 per centum of the fleet in order to be eligible for a new permit for the period after June 9, 1987.

The Secretary shall have the authority to decide, based upon available fishery research, which types of fishing gear or techniques offer the most practical and effective opportunity for reducing porpoise mortality, and to specify which of these fishing gear or techniques, or both, must be implemented during the time periods specified in subparagraphs (A) through (D) of this paragraph. In addition, the National Marine Fisheries Service may require the implementation of new gear types or fishing techniques, or both, on a

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[20] Sec. 14, as added by sec. 1 of Public Law 95-326 (92 Stat. 404) was amended and restated by sec. 201 of Public Law 97-389 (96 Stat. 1949).

faster schedule if the Service determines that faster implementation is technically and economically feasible.

(b) The General Permit issued under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) to the Federation of Japan Salmon Fisheries Cooperative Association on May 7, 1981 (hereinafter referred to as the "General Permit"), is extended through June 9, 1987, unless earlier terminated by the Secretary pursuant to applicable law: *Provided,* That—

(1) all other provisions of the General Permit and applicable law shall remain in effect during that period:

(2) the Secretary shall by January 1 of each year during that period prepare and make available a report covering the results of the annual review required by condition B–2 of the General Permit and a proposed action plan for the forthcoming fishing season setting forth monitoring, research and development, and any other necessary actions to assure compliance with the General Permit, resolve questions about the status and trends of marine mammals affected by the Japanese high seas and land-based salmon gillnet fisheries, and reduce the annual incidental take of marine mammals in the Fishery Conservation Zone, [4] and shall publish a notice of availability of the report in the Federal Register. The Secretary shall, by April 30 of each year during this period, prepare and make available a report covering a final action plan and shall publish a notice of availability of the report in the Federal Register.

(3) the Memorandum of Understanding between the Government of the United States of America and the Government of Japan dated June 3, 1981, relating to such incidental taking shall be modified or renegotiated by June 9, 1984, so as to apply to this extended period and to ensure the conduct of necessary monitoring and research and development efforts to implement the action plans described in paragraph (2) of this subsection.

(c) The taking of marine mammals incidental to fishing operations by Japanese salmon fishing vessels within the Fishery Conservation Zone [4] shall be regulated in accordance with the General Permit, except that the Secretary shall take appropriate steps, including the suspension or modification of the General Permit, if the Secretary determines that the General Permit holder or certificate holders are not adhering to the conditions of the General Permit or to the conditions specified in paragraphs (a)(1)(C) and (a)(2) of this section and publishes such determination and its basis in the Federal Register.

(d) The terms and conditions under which the General Permit is issued may be modified by the Secretary in such manner as the Secretary determines to be consistent with and necessary to carry out the purposes of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362 *et seq.*) and this Act.

(e) The Secretary shall ensure that any Memorandum of Understanding between the Government of Japan and the Government of the United States of America shall require no less of a commitment to marine mammals research and seabird research than that required by this section and the Memorandum of Understanding in

effect on the date of enactment of the Fisheries Amendments Act of 1982.

(f)(1) In order to assure full implementation of the provisions of this section, the Secretary shall include as a condition of such General Permit and any Memorandum of Understanding that the Government of Japan or the permit holder, shall provide—

(A) appropriate funding each year to carry out fully a joint research program on Dall's porpoise and other marine mammals incidentally taken in the Japanese fishery; and

(B) a full report each year on the activities undertaken by the Government of Japan and the General Permit holder relating to marine mammal research and the progress toward the elimination of the incidental taking of marine mammals in the fishery.

(2) If the Secretary finds that such research cannot be successfully conducted because of a lack of adequate funding by the Government of Japan or the General Permit holder the Secretary shall immediately suspend the General Permit until such time as adequate funding is provided.

Sec. 15.[19] The Secretary, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating may administer this Act consistent with the terms of the Convention on a provisional basis pending the exchange by all the contracting parties of instruments of ratification or approval of the Protocol Amending the International Convention for High Seas Fisheries of the North Pacific Ocean, signed at Tokyo on April 25, 1978, in accordance with article II thereof.

Sec. 16.[19] If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

4. Tuna Conventions

a. Tuna Conventions Act of 1950, as amended

Public Law 81-764 [S. 2633], 64 Stat. 777; 16 U.S.C. 951-961, approved September 7, 1950, as amended by Public Law 87-814 [S. 2568], 76 Stat. 923, approved October 15, 1962; and by Public Law 92-471 [H.R. 9501], 86 Stat. 784, approved October 9, 1972

AN ACT To give effect to the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City January 25, 1949,[1] by the United States of America and the United Mexican States, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949,[2] by the United States of America and the Republic of Costa Rica, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuna Conventions Act of 1950".

Sec. 2. As used in this chapter, the term—

(a) "convention" includes (1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City, January 25, 1949, by the United States of America and the United Mexican States, (2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

(b) "commission" includes (1) the International Commission for the Scientific Investigation of Tuna, (2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

(c) "United States Commissioners" means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 3 of this Act;

(d) "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States and

(e) [3] "United States" shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

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[1] Terminated Feb. 5, 1965.

[2] 1 UST 230; TIAS 2040; 80 UNTS 3, See boxnote on page 2.

[3] Public Law 87-814 substituted definition of "United States" for definition of "enforcement agency."

Sec. 3. The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

(b) at least one of the Commissioners who are such legal residents shall be a person chcsen from the public at large, and who is not a salaried employee of a State or of the Federal Government; and

(c) at least one shall be an officer of the United States Fish and Wildlife Service.

Sec. 4. The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.

Sec. 5. [Repealed by Public Law 92-471 (86 Stat. 784; 16 U.S.C. 954).]

Sec. 6. (a) The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws, and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the Secretary of the Interior,[4] to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

(b) Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the Secretary of the Interior,[4] shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

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[4] Public Law 87-814 substituted "Secretary of the Interior" for "head of the enforcement agency."

(c) [5] Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of the Interior upon approval of such recommendations by the Secretary of State and the Secretary of the Interior. The Secretary of the Interior shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (1) submission of written data, views, or arguments, and (2) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations. After publication in the Federal Register such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of the Interior shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission's recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of the Interior shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed; the limitation or prohibition of the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this Act; and such other measures incidental thereto as the Secretary of the Interior may deem necessary to implement the recommendations of the commission: *Provided,* That upon the promulgation of any such regulations the Secretary of the Interior shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit the entry into the United States from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conversation recommendations of the commission, of fish in any form of

[5] Public Law 87-814, added subsec. (c).

those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area; and (2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of the Interior is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

Sec. 7.[6] Any person authorized to carry out enforcement activities under this Act and any person authorized by the commission shall have power without warrant or other process, to inspect, at any reasonable time, catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished.

Sec. 8.[7] (a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessels or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this Act, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 4 of this Act, from any

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[6] Public Law 87-814 substituted provisions respecting inspection of returns, records, or other reports for provisions authorizing a fine not exceeding $1,000 and proceeds for injunction against fishing for or possession of the kind of fish covered by the convention for failure to make, keep, furnish, or refusal to permit inspection of returns, records, or reports or for furnishing a false return, record, or report.

[7] Public Law 87-814 substituted provisions respecting violations, fines, and forfeitures and applications of related laws for respecting enforcement of act.

country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of section 4 of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary of the Interior shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 of this Act.

(d) Any person violating any provisions of subsection (a) of this section shall be fined not more than $25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than $50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than $1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than $5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than $100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

Sec. 9. (a) In order to provide coordination between the general annual programs of the commissions and programs of other agencies, relating to the exploration, development, and conservation of fishery resources, the Secretary of State may recommend to the United States Commissioners that they consider the relationship of the commissions' programs to those of such agencies and when necessary arrange, with the concurrence of such agencies for mutual cooperation between the commissions and such agencies for carrying out their respective programs.

(b) All agencies of the Federal Government are authorized on request of the commissions to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the commissions in the performance of their duties.

(c) The commissions are authorized and empowered to supply facilities and personnel to existing non-Federal agencies to expedite research work which in the judgment of the commissions is contributing or will contribute directly to the purposes of the conventions.

Sec. 10.[8] (a) The judges of the United States district courts and United States Commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause,

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[8] Sec. 10 was amended and restated by sec. 5 of Public Law 87-814 (76 Stat. 925).

issue such warrants or other process as may be required for enforcement of this Act and the regulations issued pursuant thereto.

(b) Enforcement of the provisions of this Act and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of the Interior, and the United States Bureau of Customs. In addition, the Secretary of the Interior may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for those purposes.

(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this Act or the regulations issued thereunder;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of the provisions of this Act or the regulations issued thereunder, then to arrest such person.

(e) Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this Act or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of the Interior.

(f) Notwithstanding the provisions of section 2464 of title 28 of the United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

Sec. 11. None of the prohibitions contained in this Act or in the laws and regulations of the States shall prevent the commissions from conducting or authorizing the conduct of fishing operations and biological experiments at any time for the purpose of scientific investigations as authorized by the conventions, or shall prevent the commissions from discharging any of its or their functions or duties prescribed by the conventions.

Sec. 12. There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of each convention and of this Act, including—

(a) contributions to each commission for the United States share of any joint expenses of the commission and the expenses of the United States Commissioners and their staff, including personal services in the District of Columbia and elsewhere;

(b) travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b);

(c) printing and binding without regard to section 11 of the Act of March 1, 1919 (U.S.C., title 44, sec. 111), or section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5);

(d) stenographic and other services by contract, if deemed necessary, without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5); and

(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels.

Sec. 13. If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

Sec. 14. This Act shall take effect with respect to each of the conventions upon the entry into force of that convention unless such entry into force shall be prior to the date of approval of this Act in which case this Act shall take effect immediately.

b. Atlantic Tunas Convention Act of 1975, as amended [1]

Public Law 94-70 [H.R. 5522], 89 Stat. 385, approved August 5, 1975; as amended by Public Law 94-265 [H.R. 200], 90 Stat. 331 at 361, approved April 13, 1976; Public Law 95-33 [H.R. 6205], 91 Stat. 173, approved May 26, 1977; Public Law 96-339 [S. 2549], 94 Stat. 1069, approved September 4, 1980; by Public Law 98-44 [S. 625], 97 Stat. 216, approved July 12, 1983; and by Public Law 99-659 [S. 991], 100 Stat 3706, approved November 14, 1986

AN ACT To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966,[2] by the United States of America and other countries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Atlantic Tunas Convention Act of 1975".

DEFINITIONS

Sec. 2. For the purpose of this Act—

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4) The term "fisheries zone" means the waters included within a zone contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is two hundred [3] nautical miles from the baseline from which the territorial sea is measured; [4] or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

(5) The term "fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

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[1] 16 U.S.C. 971-971h.

[2] 20 UST 2887; see boxnote page 2.

[3] Sec. 2 of Public Law 95-33 (91 Stat. 173) struck out "200" and inserted the words "two hundred".

[4] Sec. 405(a) of the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265) substituted the words to this point beginning with "the waters included within a zone." The language which was struck out read as follows: "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094),".

(6) the term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(7) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(8) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(9) The term "Secretary" means the Secretary of Commerce.

(10) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

COMMISSIONERS

Sec. 3. (a) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section 4 of this Act, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

ADVISORY COMMITTEE

Sec. 4. There is established an advisory committee which shall be composed of—

(1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and

(2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the

Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(a)).

Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment.[5] Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners--

(A) [6] if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(B) [6] in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom subparagraph (A) [7] does not apply may be paid for his actual transportation expenses and per diem incident to this attendance.

SECRETARY OF STATE TO ACT FOR THE UNITED STATES

Sec. 5. (a) The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that

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[5] Sec. 4 was amended and restated to this point by sec. 1(1)(C) of Public Law 96-339 (94 Stat. 1069). This amendment added to the membership of the advisory committee the chairmen of the various Fishery Management Councils.

[6] Sec. 1(1) of Public Law 96-339 (94 Stat. 1069) redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively.

[7] This reference to subpar. (A) was substituted in lieu of a reference to par. (1) by sec. 1(1) of Public Law 96-339 (94 Stat. 1069).

an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

(b) The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or fisheries zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country.

ADMINISTRATION

Sec. 6. (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect

to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Enforcement activities at sea under the provisions of this Act for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c)(1) Upon favorable action by the Secretary of State under section 5(a) of this act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels of persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section; and

(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary, with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species

under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(d)(1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (Thunnus thynnus) which were proposed at the third regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this section.

(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of section 553 of title 5 of the United States Code, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

Sec. 7. (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board

such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6 (c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6 (c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 (c) or (d) of this Act.

(e)(1) Any person who—

(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than $25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than $50,000;

(B) violates any provisions of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than $1,000, and for any subsequent violation of such subsection (b) and (c) shall be assessed a civil penalty of not more than $5,000; or

(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than $100,000.

(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause.

(3) No penalty shall be assessed under this subsection unless the person accused of committing any violation is given notice and opportunity for a hearing with respect to such violation.

(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States or any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(f) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

ENFORCEMENT

Sec. 8. (a) Any person authorized in accordance with the provisions of this Act to enforce a provision of this Act and the regulations issued thereunder may—

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this Act or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this Act or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this Act or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshall or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

COOPERATION: COMMISSION'S FUNCTIONS NOT RESTRAINED BY THIS ACT OR STATE LAWS

Sec. 9. (a) The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

(b) All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) None of the prohibitions deriving from this Act, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d)(1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this Act to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this Act, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this Act, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this act within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such regulations.

(e) To insure that the purposes of subsection (d) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) applies or may apply and the extent to which such laws and regulations are enforced.

APPROPRIATIONS

Sec. 10. There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal years

1986, 1987, 1988, and 1989 [8] such sums as may be necessary for carrying out the purposes and provisions of this Act, including—

(1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.

SEPARABILITY

Sec. 11. If any provision of this Act or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

[8] Public Law 95-33 (91 Stat. 173) extended the authorization through fiscal year 1980. Sec. 1(2) of Public Law 96-339 (94 Stat. 1069) further extended the authorization through fiscal year 1983. Sec. 101 of Public Law 98-44 (97 Stat. 216) extended the authorization through fiscal year 1986. Sec. 404 of Public Law 99-659 (100 Stat. 3737) extended the authorization through fiscal year 1989.

c. Atlantic Tunas Convention Act of 1975, Appropriation Authorization

Partial text of Public Law 96-339 [S. 2549], 94 Stat. 1069, approved September 4, 1980

AN ACT To authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ATLANTIC TUNAS CONVENTION ACT OF 1975.

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SEC. 2.[1] OBSERVER PROGRAM REGARDING CERTAIN FOREIGN FISHING.

(a) DEFINITIONS.—As used in this section—

(1) The term "Act of 1976" means the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*).

(2) The term "billfish" means any species of marlin, spearfish, sailfish or swordfish.

(3) The term "Secretary" means the Secretary of Commerce.

(b) OBSERVER PROGRAM.—The Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel—

(1) is in waters that are within—

(A) the fishery conservation zone [2] established under section 101 of the Act of 1976, and

(B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

The Secretary may acquire observers for such program through contract with qualified private persons.

(c) FUNCTIONS OF OBSERVERS.—United States observers, while aboard foreign fishing vessels as required under subsection (b), shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

(d) FISH.—There is imposed for each year after 1980 on the owner or operator or each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) during that year which may result in the incidental

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[1] 16 U.S.C. 1827.

[2] The term "fishery conservation zone", as established in sec. 101 of the Magnuson Fishery Conservation and Management Act of 1976, was replaced with the term "exclusive economic zone", by sec. 101(c)(2) of Public Law 99-659; 100 Stat. 3707.

taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a). The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e).

(e) FUND.—There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this section. The Fund shall consist of the fees deposited into it as required under subsection (d). All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) PROHIBITED ACTS.—(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g);

(B) to refuse to pay the fee imposed under subsection (d) after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976.

(g) REGULATIONS.—The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

SEC. 3.[3] REPORTS REGARDING BLUEFIN TUNA.

The Secretary of Commerce shall prepare, for each biennial period commencing with the period covering calendar years 1981 and 1982, and submit to the Congress a report setting forth, with respect to such biennial period—

(1) the level of taking of bluefin tuna by United States fishermen in the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas;

(2) the status of bluefin tuna stocks within such Convention area and the trends in their population level; and

(3) related information resulting from the implementation of the observer program under section 2 of this Act.

The report required under this section shall be submitted to the Congress within sixty days after the close of the biennial period covered by the report. There are authorized to be appropriated such sums as may be necessary to carry out this section.

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[3] 16 U.S.C. 971i.

d. Eastern Pacific Tuna Licensing of 1984

Public Law 98–445 [H.R. 5147], 98 Stat. 1715, approved October 4, 1984

AN ACT To implement the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Eastern Pacific Tuna Licensing Act of 1984".

SEC. 2.[1] DEFINITIONS.

As used in this Act—

(1) The term "Agreement" means the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983.

The term "Agreement Area" means the area within a perimeter determined as follows: From the point on the mainland where the parallel of 40 degrees north latitude intersects the coast westward along the parallel of 40 degrees north latitude to 40 degrees north latitude by 125 degrees west longitude to 20 degrees north latitude by 125 degrees west longitude, thence southerly along the meridian of 125 degrees west longitude to 20 degrees north latitude by 125 degrees west longitude, thence easterly along the parallel of 20 degrees north latitude to 20 degrees latitude by 120 degrees west longitude, thence southerly along the meridian of 120 degrees west longitude to 5 degrees north latitude by 120 degrees west longitude, thence easterly along the parallel of 5 degrees north latitude to 5 degrees north latitude by 110 degrees west longitude, thence southerly along the meridian of 110 degrees west longitude to 10 degrees south latitude by 110 degrees west longitude, thence easterly along the parallel of 10 degrees south latitude to 10 degrees south latitude by 90 degrees west longitude, thence southerly along the meridian of 90 degrees west longitude to 30 degrees south latitude by 90 degrees west longitude, thence easterly along the parallel of 30 degrees south latitude to the point on the mainland where the parallel intersects the coast; but the Agreement Area does not include the zones within twelve nautical miles of the baseline from which the breadth of territorial sea is measured and the zones within two hundred nautical miles of the baselines of Coastal States not signatories to the Agreement, measured from the same baseline.

(3) The term "designated species of tuna" means yellowfin tuna, Thunnus albacares (Bonnaterre, 1788); bigeye tuna, Thunnus obesus (Lowe, 1839); albacore tuna, Thunnus alalunga (Bonnaterre, 1788); northern bluefin tuna, Thunnus thynnus

[1] 16 U.S.C. 972.

(Linnaeus, 1758): southern bluefin tuna, Thunnus maccoyil (Castelnau, 1872); skipjack tuna, Katsuwonus pelamis (Linnaeus 1578); black skipjack, Euthynnus Lineatus (Kishinouye 1920); kawakawa, Euthynnus affinis (Cantor, 1849); bullet tuna, Auxis rochei (Risso, 1810), frigate tuna, Ausix (Lacepede, 1800); eastern Pacific bonito, Sarda chiliensis (Cuvier in Cuvier and Valenciennes, 1831); and Indo-Pacific bonito, Sarda orientalis (Temminck and Schlegel, 1844).

(4) The term "Council" means the body consisting of the representatives from each Contracting Party to the Agreement which is a Coastal State of the eastern Pacific Ocean or a member of the Inter-American Tropical Tuna Commission at the time of entry into force of the Agreement.

SEC. 3.[2] UNITED STATES REPRESENTATION ON THE COUNCIL.

(a) The Secretary of State—

(1) shall appoint a United States representative to the Council; and

(2) may appoint not more than three alternate United States representatives to the Council.

(b) An individual is not eligible for appointment as, or to serve as, the United States representative under subsection (a)(1) unless the individual is an officer or employee of the United States Government.

(c) An individual is not entitled to compensation for serving as the United States representative or an alternate United States representative.

(d) While away from home or a regular place of business in the performance of service as the United States representative or an alternate United States representative, an individual is entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as individuals employed intermittently in Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

SEC. 4.[3] SECRETARY OF STATE TO ACT FOR THE UNITED STATES.

The Secretary of State shall receive, on behalf of the United States Government, reports, requests, recommendations and other communications of the Council, and, in consultation with the Secretary of Commerce, shall act directly thereon or by reference to the appropriate authorities.

SEC. 5.[4] APPLICATION TO OTHER LAWS.

(a) Notwithstanding section 4 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1874), such Act applies with respect to a seizure by a Contracting Party to the Agreement of a vessel of the United States within the Agreement Area for violation of the Agreement if the Secretary of State determines that the violation is not of such seriousness as to diminish the effectiveness of the Agreement.

(b) The seizure by a Contracting Party to the Agreement of a vessel of the United States shall not be considered to be a seizure described in section 205(a)(4)(C) of the Magnuson Fishery Conserva-

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[2] 16 U.S.C. 972a.
[3] 16 U.S.C. 972b.
[4] 16 U.S.C. 972c.

tion and Management Act (16 U.S.C. 1825(a)(4)(C)) if the seizure is consistent with the Agreement.

SEC. 6.[5] DISPOSITION OF FEES.

All fees accruing to the United States under Article III Of the Agreement shall be deposited into the Treasury of the United States.

SEC. 7.[6] REGULATIONS.

The Secretary of Commerce, in cooperation with the Secretary of State of the department in which the Coast Guard is operating, shall issue such regulations as may be necessary to carry out the purposes and objectives of the Agreement and this Act. Regulations may be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located. Regulations concerning the conservation of a designated species of tuna may be issued only to implement conservation recommendations made by the Council under Article 3(D) of the Agreement.

SEC. 8.[7] PROHIBITED ACTS.

(a) It is unlawful for any person subject to the jurisdiction of the United States—

(1) to engage in fishing for a designated species of tuna within the Agreement Area unless issued a license under the Agreement authorizing such fishing;

(2) to engage in fishing for a designated species of tuna within the Agreement area in contravention of regulations promulgated by the Secretary of the Commerce under the Agreement:

(3) knowingly to ship, transport, purchase, sell, offer for sale, export, or have in custody, possession, or control any designated species of tuna taken or retained in violation of regulations issued under section 7;

(4) to fail to make, keep, or furnish any catch return, statistical record, or other report required by regulations issued under section 7;

(5) being a person in charge of a vessel of the United States, to fail to stop upon being hailed by an authorized official of the United States, or to refuse to permit officials of the United States to board the vessel or inspect its catch, equipment, books, documents, records, or other articles, or to question individuals on board; or

(6) to import from any country, in violation of any regulation issued under section 7, any designated species of tuna.

(b) Any person who is convicted of violating—

(1) subsection (a)(1), (a)(2), (a)(3) shall be fined or assessed a civil penalty not more than $25,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than $50,000;

(2) subsection (a)(4) or (a)(5) shall be fined or assessed a civil penalty not more than $5,000, and for a subsequent violation

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[5] 16 U.S.C. 972d.
[6] 16 U.S.C. 972e.
[7] 16 U.S.C. 972f.

shall be fined or assessed a civil penalty not more than $5,000; or

(3) subsection (a)(6) shall be fined or assessed a civil penalty not more than $100,000.

(c) All designated species of tuna taken or retained in violation of subsection (a) (1), (2), (3), or (6), or the monetary value thereof, is subject to forfeiture.

(d) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

SEC. 9.[8] ENFORCEMENT.

(a) The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and the regulations issued under section 7.

(b) The enforcement of this Act and the regulations issued under section 7 shall be the joint responsibility of the department in which the Coast Guard is operating, the Department of Commerce, and the United States Customs Service. In addition, the Secretary of Commerce may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities under this section. When so designated, such officers and employees may function as Federal law enforcement agents for these purposes.

(c) An individual authorized to carry out enforcement activities under this section has power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) An individual so authorized to carry out enforcement activities under this section has power—

(1) with or without a warrant or other process, to arrest any person subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this Act or the regulations issued under section 7;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of the search he has reasonable cause to believe that such vessel or any individual on board is engaging in operations in violation of this Act or any regulation issued thereunder to arrest such person.

(e) An individual authorized to enforce this Act may seize, whenever or wherever lawfully found, all species of designated tuna taken or retained in violation of this Act or the regulations issued under section 7. Any species so seized may be disposed of pursuant to the order of a court of competent jurisdiction, under subsection

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[8] 16 U.S.C. 972g.

(f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

(f) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any species of designated tuna seized if the process has been levied, on receiving from the claimant of the species a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the species seized, if condemned, without impairment in value or, in the discretion of the court, to pay the equivalent value in money or otherwise to answer the decree of the court in such case. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the species may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

SEC. 10.[9] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after fiscal year 1984 such sums as may be necessary to carry out this Act.

[9] 16 U.S.C. 972h.

e. South Pacific Tuna Act of 1988

Public Law 100-330 [S. 1989], 102 Stat. 591, approved June 7, 1988; as amended by Public Law 100-350 [H.R. 4621], 102 Stat. 660, approved June 27, 1988

AN ACT To implement the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "South Pacific Tuna Act of 1988".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) The term "Administrator" means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States Government.

(2) The term "Authorized Officer" means any officer who is authorized by the Secretary, or the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an enforcement agreement with the Secretary under section 10(a) of this Act.

(3) The term "Authorized Party Officer" means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

(4) The term "applicable national law" means any provision of law of a Pacific Island Party which is described in paragraph 1(a) of Annex I of the Treaty.

(5) The term "Closed Area" means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

(6) The term "fishing" means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish;

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(E) any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or

(F) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

(7) The term "fishing vessel" or "vessel" means any boat, ship, or other craft which is used for, equipped to be used for,

or of a type normally used for commercial fishing, and which is documented under the laws of the United States.

(8) The term "Licensing Area" means all waters in the Treaty Area except for—

(A) those waters subject to the jurisdiction of the United States in accordance with international law;

(B) those waters within Closed Areas; and

(C) those waters within Limited Areas closed to fishing.

(9) The term "licensing period" means the period of validity of licenses issued in accordance with the Treaty.

(10) The term "Limited Area" means any area so identified in Schedule 3 of Annex I of the Treaty.

(11) The term "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer, and master.

(12) The term "Pacific Island Party" means a Pacific Island nation which is a party to the Treaty.

(13) The term "Party" means a nation which is a party to the Treaty.

(14) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(15) The term "Secretary" means the Secretary of Commerce, or the designee of the Secretary of Commerce.

(16) The term "State" means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(17) The term "Treaty" means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.

(18) The term "Treaty Area" means the area so described in paragraph 1(k) of Article 1 of the Treaty.

SEC. 3. APPLICATION TO OTHER LAWS.

The seizure by a Pacific Island Party of a vessel of the United States shall not be determined to be a seizure described in section 205(a)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)(4)(C)) or section 2 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1972) if the seizure is found by the Secretary of State to be in accordance with the provisions of the Treaty.

SEC. 4. REGULATIONS.

The Secretary of Commerce, with the concurrence of the Secretary of State and after consultation with the Secretary of the department in which the Coast Guard is operating, shall issue regulations as may be necessary to carry out the purposes and objectives of the Treaty and this Act. These regulations shall be made appli-

cable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located.

SEC. 5. PROHIBITED ACTS.

(a) Except as provided in section 6 of this Act, it is unlawful for any person subject to the jurisdiction of the United States—

(1) to violate any provision of this Act or any regulation or order issued pursuant to this Act;

(2) to use a vessel for fishing in violation of an applicable national law;

(3) who has entered into a fishing arrangement under paragraph 3 of Article 3 of the Treaty, to violate the terms and conditions of such fishing arrangement if the Secretary of State has decided under section 18 of this Act that Article 4 and paragraph 6 of Article 5 of the Treaty shall apply to the arrangement;

(4) to use a vessel for fishing in any Limited Area in violation of any requirement in Schedule 3 of Annex I of the Treaty;

(5) to use a vessel for fishing in any Closed Area;

(6) to falsify any information required to be reported, notified, communicated, or recorded pursuant to a requirement of this Act, or to fail to submit any required information, or to fail to report to the Secretary immediately any change in circumstances which has the effect of rendering any such information false, incomplete, or misleading;

(7) to intentionally destroy evidence which could be used to determine if a violation of this Act or the Treaty has occurred;

(8) to refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of this Act or the Treaty;

(9) to refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

(10) to forcibly assault, resist, oppose, impede, intimidate, or interfere with—

(A) any Authorized Officer or Authorized Party Officer in the conduct of a search or inspection in connection with the enforcement of this Act or the Treaty; or

(B) an observer in the conduct of observer duties under the Treaty;

(11) to resist a lawful arrest for any act prohibited by this section;

(12) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; or

(13) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or the Treaty, with the knowledge that the fish were so taken or retained.

(b) Except as provided in section 6 of this Act, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area—

(1) to use a vessel to fish unless validly licensed as required by the Administrator;

(2) to use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(3) to use a vessel for fishing by any method other than the purse-seine method;

(4) to use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

(5) to operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;

(6) to use a vessel to fish in a manner inconsistent with an order issued by the Secretary under section 11 of this Act; or

(7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use an aircraft in association with the fishing activities of a vessel unless it is identified in the license application for the vessel, or any amendment thereto.

SEC. 6. EXCEPTIONS.

(a) The prohibitions of section 5 of this Act and the licensing requirements of section 9 of this Act shall not apply to fishing for albacore tuna by vessels using the trolling method outside of the 200 nautical mile fisheries zones of the Pacific Island Parties.

(b) The prohibitions of section 5 (a)(4), (a)(5), and (b)(3) of this Act shall not apply to fishing under the terms and conditions of an arrangement which has been reached under paragraph 3 of Article 3 of the Treaty and which, pursuant to a decision by the Secretary of State under section 18 of this Act, is covered by Article 4 and paragraph 6 of Article 5 of the Treaty.

SEC. 7. CRIMINAL OFFENSES.

(a) A person is guilty of a criminal offense if he or she commits any act prohibited by section 5(a) (8), (10), (11), or (12) of this Act.

(b) Any offense described in subsection (a) of this section is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any Authorized Officer, Authorized Party Officer, or observer under the Treaty in the conduct of their duties, or places any such Authorized Officer, Authorized Party Officer, or observer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than 10 years, or both.

(c) The district courts of the United States shall have jurisdiction over any offense described in this section.

SEC. 8. CIVIL PENALTIES.

(a) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 5 of this Act, shall be liable to the United States Code for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. Except for those acts prohibited by section 5(a) (4), (5), (7), (8), (10), (11), and (12), and section 5(b) (1), (2), (3), and (7) of this Act, the amount of the civil penalty shall not exceed $250,000 for each violation. Upon written notice, the Secretary of State shall have the right to participate in any proceeding initiated to assess a civil penalty for violation of this Act.

(b) Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States, and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) Except as provided in subsection (g) of this section, if any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States.

(d) Except as provided in subsection (g) of this section, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5 of this Act shall be liable in rem for any civil penalty assessed for the violation under section 8 of this Act and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) The Secretary, after consultation with the Secretary of State, may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall

be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(g) If a vessel used in a violation of section 5(a) (1), (2), (3), (4), (5), (6), (7), (8), (9), or (13) or section 5(b) of this Act for which a civil penalty has been assessed—

(1) had a valid license under the Treasury at the time of the violation, and

(2) within 60 days after the penalty assessment has become final, leaves and remains outside of the Licensing Area, all Limited Areas closed to fishing, and all Closed Areas until the final penalty has been paid,

there shall be no referral to the Attorney General under subsection (c) of this section or in rem action under subsection (d) of this section in connection with such civil penalty.

SEC. 9. LICENSES.

(a) Licenses to fish in the Licensing Area, to be issued by the Administrator in accordance with the Treaty, may be requested from the Secretary by operators of vessels, under procedures established by the Secretary. The license application shall designate an agent for the service of legal process to be located in Port Moresby, Papua New Guinea. The applicant shall ensure that the designated agent for service of process, acting on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty and will, within 21 days after notification, travel if necessary for this purpose to any Pacific Island Party at no expense to that Party.

(b) Except as provided in subsections (e), (f), and (g) of this section, the Secretary shall forward a vessel license application to the Secretary of State for transmittal to the Administrator whenever such application is in accordance with application procedures established by the Secretary, includes a complete application form as required by Annex II of the Treaty, and is accompanied by the required license fee.

(c)(1) In the initial year of implementation, fees for the first 40 vessel licenses shall be at least $50,000 each, for any 10 vessel licenses in addition to the first 40 shall be $60,000 each, and for vessel licenses in addition to the first 50 shall be in accordance with Annex II of the Treaty.

(2) After such initial year, fees for vessel licenses shall be paid in accordance with fee schedules established under Annex II of the Treaty and published by the Secretary.

(d) Licenses shall be valid for the licensing period specified by the Administrator.

(e) The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

(f) For the initial year of implementation, license fees totaling at least $1,750,000 must be received by the Secretary before any license applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(g) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator for one of the following reasons:

(1) where the application is not in accordance with the Treaty or the procedures established by the Secretary;

(2) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(3) where the owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance;

(4) where the owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.

SEC. 10. ENFORCEMENT.

(a) The provisions of this Act shall be enforced by the Secretary in cooperation with the Secretary of State. The Secretary, after consultation with the Secretary of State, may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency and of any State agency in the performance of these duties.

(b)(1) The Secretary shall, at the request of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable, and in any case within 2 months, to that Party through the Secretary of State on any action taken or proposed by the Secretary in regard to the alleged infringement.

(2) Upon commencement of an investigation under paragraph (1) of this subsection, the Secretary shall notify the operator of any vessel concerned regarding—

(A) the nature of the investigation;

(B) the right of the operator to submit comments, information, or evidence bearing on the investigation and to receive, upon the operator's timely written request to the Secretary, an opportunity to present such comments, information, or evidence orally to the Secretary or the Secretary's representative within 30 days after receipt of such notification.

(c)(1) Prior to instituting any legal proceedings under this Act for any action which involves an alleged infringement of the Treaty in waters within the jurisdiction of a Pacific Island Party, the Secretary, through the Secretary of State, shall notify the Pacific Island Party in accordance with paragraph 8 of Article 4 of the Treaty that the proceedings will be instituted. Such notice shall include a

statement of the facts believed to show an infringement of the Treaty and the nature of the proposed proceedings, including any proposed charges and any proposed penalties. The Secretary shall not institute such proceedings if the Pacific Island Party objects within 30 days after the effective date of the notice under Article 10 of the Treaty.

(2) The Pacific Island Party exercising jurisdiction over the waters involved in such a legal proceeding shall be promptly notified by the Secretary, through the Secretary of State, concerning the outcome of the proceeding.

(d)(1) Any Authorized Officer may—

(A) with or without a warrant or other process—

(i) arrest any person, if he has reasonable cause to believe that the person has committed any act subject to prosecution under section 7 of this Act;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act; or

(iii) seize samples of fish or items for evidence (other than the vessel or its fishing gear or equipment) related to any violation of any provision of this Act;

(iv) order a vessel into the most convenient port of the United States for investigation when an investigation has been requested by a Pacific Island Party in accordance with the Treaty and when such an order is necessary to gather information for such an investigation;

(B) execute any warrant or other process issued by any court of competent jurisdiction;

(C) exercise any other lawful authority; and

(D) investigate alleged violations of the Treaty to the same extent authorized to investigate alleged violations of this Act.

(2) To the extent possible, Authorized Officers shall exercise their powers under paragraph (1)(A) (ii), (iii), and (iv) of this subsection so as not to interfere unduly with the lawful operation of the vessel.

(3) Nothing in this Act shall be construed to limit the enforcement of this or other applicable Federal laws under section 89 of title 14, United States Code.

(e) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act.

SEC. 11. FINDINGS BY THE SECRETARY.

(a) Following any investigation conducted in accordance with section 10(b) of this Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel which has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding—

(1) that the fishing vessel—

(A) while fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, such fishing is not authorized to be conducted in the Licensing Area without a license;

(B) was involved in any incident in which an Authorized Officer, Authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding, or subjected to physical intimidation or physical interference in the performance of duties as authorized by this Act or the Treaty;

(C) has not made full payment within 60 days of any amount due as a result of a final judgment or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(D) was not represented by an agent for service of process in accordance with the Treaty; or

(2) that there is probable cause to believe that the fishing vessel—

(A) was used in violation of section 5 (a)(4), (a)(5), (b)(2), or (b)(3) of this Act;

(B) used an aircraft in violation of section 5(b)(7); or

(C) was involved in an incident in which section 5(a)(7) was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made under paragraph 7 of Article 5 of the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of such Pacific Island Party, the Secretary shall order the vessel to leave such waters until the Secretary of State notifies the Secretary that such order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under subsection (a)(1) (C) or (D) of this section as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) No order issued in accordance with this section is subject to judicial review.

(e) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including permanent or temporary injunction, to enforce any order issued by the Secretary under this section.

SEC. 12. REPORTING.

(a) Holders of licenses shall comply with the reporting requirements of part 4 of Annex I to the Treaty.

(b) Information provided by license holders in Schedules 5 and 6 of Annex I of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under the Freedom of Information Act, unless disclosure is required under court order or unless the information is essential for an enforcement action under section 5, 10(b), 10(c), or 11 of this Act, or any other proper law enforcement action.

SEC. 13. CLOSED AREA STOWAGE REQUIREMENTS.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as

far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

SEC. 14. OBSERVERS.

(a) The operator and each member of the crew of a vessel shall allow and assist any individual identified as an observer under the Treaty by the Pacific Island Parties—

(1) to board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary;

(2) without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel which the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas which may be used to hold, process, weigh, and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area;

(3) to disembark at the point and time notified by the Pacific Island Parties to the Secretary; and

(4) to carry out observer duties safely.

(b) The operator shall provide any such observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation, and medical facilities of such reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

(c) The operator of any vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any individual so authorized by the Pacific Island Parties to have full access to any place where such fish is unloaded, to remove samples, and to gather any other information relating to fisheries in the Licensing Area.

SEC. 15. TECHNICAL ASSISTANCE.

The United States tuna industry shall provide $250,000 annually in technical assistance, including provision of assistance by technicians, in response to requests coordinated through the Administrator. The Secretary of State shall designate an entity to coordinate the provision of such technical assistance as provided by the United States tuna industry and to provide an annual report to the Secretary of State regarding the provision of such technical assistance.

SEC. 16. ARBITRATION.

In the event of a dispute requiring the establishment of an arbitral tribunal under Article 6 of the Treaty, the Secretary of State, in consultation with the Secretary, shall appoint the arbitrator to be appointed by the United States under paragraph 3 of that Article, and shall represent the United States in reaching agreement under such paragraph with each Pacific Island Party involved concerning the appointment of the presiding arbitrator of the tribunal.

SEC. 17. DISPOSITION OF FEES, PENALTIES, FORFEITURES, AND OTHER MONEYS.

To the extent required by Article 4 of the Treaty, an amount equivalent to the total value of any fine, penalty, or other amount collected as a result of any action, judicial or otherwise, taken pursuant to sections 7 and 8 of this Act shall be paid by the United States through the Secretary of State to the Administrator as soon as reasonably possible following the date that such amount is collected.

SEC. 18. ADDITIONAL AGREEMENTS.

Within 30 days after the Secretary of State's receipt of notice from a Pacific Island Party that it has concluded an arrangement pursuant to paragraph 3 of Article 3 of the Treaty, the Secretary of State shall consult with the Secretary concerning whether the procedures of Article 4 and paragraph 6 of Article 5 of the Treaty should be made applicable to such arrangement. At the conclusion of the consultations the Pacific Island Party and all other persons agreeing to the arrangement shall be notified by the Secretary of State of the resulting decision.

SEC. 19. SECRETARY OF STATE TO ACT FOR THE UNITED STATES.

The Secretary of State is authorized to receive on behalf of the United States reports, requests, and other communications from the Administrator and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, after consultations with the Secretary, may accept or reject, on behalf of the United States, changes or amendments to Annex I of the Treaty and its Schedules and Annex II to the Treaty and its Schedules.

SEC. 20. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated for fiscal years 1988, 1989, 1990, 1991, and 1992 such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this Act including—

(1) for fiscal years 1988, 1989, 1990, 1991, and 1992, an amount not to exceed $350,000 annually to the Department of Commerce for administrative expenses; and

(2) for fiscal years 1988, 1989, 1990, 1991, and 1992, an amount not to exceed $50,000 annually to the Department of State for administrative expenses.

(b) Funds appropriated for the purposes of the Treaty may be used notwithstanding any of the provisions of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or of any appropriations Act that imposes restrictions on the maintenance or use of cash transfer assistance, which are inconsistent with the provisions of the Treaty.

SEC. 21. EFFECTIVE DATE.

(a) Except as provided in subsection (b) of this section, this Act shall be effective on the date on which the Treaty enters into force for the United States.

(d)(1) The authority to promulgate regulations pursuant to this Act shall be effective on the date of enactment of this Act.

(2) Any regulation promulgated pursuant to this Act shall not be effective before the date on which the Treaty enters into force for the United States.

5. Whaling Convention Act of 1949 [1]

Public Law 81-676 [S. 2080], 64 Stat. 421; 16 U.S.C. 916-916(l) approved August 9, 1950

AN ACT To authorize the regulation of whaling and to give effect to the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946,[2] by the United States of America and certain other governments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. That this Act may be cited as the "Whaling Convention Act of 1949".

Sec. 2. When used in this Act—

(a) Convention: The word "Convention" means the International Convention for the Regulation of Whaling signed at Washington under the date of December 2, 1946, by the United States of America and certain other governments.

(b) Commission: The word "Commission" means the International Whaling Commission established by article III of the convention.

(c) United States Commissioner: The words "United States Commissioner" mean the member of the International Whaling Commission representing the United States of America appointed pursuant to article III of the convention and section 3 of this Act.

(d) Person: The word "person" denotes every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(e) Vessel: The word "vessel" denotes every kind, type, or description of water craft or contrivance subject to the jurisdiction of the United States used, or capable of being used, as a means of transportation.

(f) Factory ship: The words "factory ship" mean a vessel in which or on which whales are treated or processed, whether wholly or in part.

(g) Land station: The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

(h) Whale catcher: The words "whale catcher" mean a vessel used for the purposes of hunting, killing, taking, towing, holding onto, or scouting for whales.

(i) Whale products: The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

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[1] See also sec. 405 of the Department of State Authorization Act, FY 1980-81 (Public Law 96-60; 93 Stat. 403) which urged the International Whaling Commission to agree to a moratorium on the commercial killing of whales. The section also called upon specific countries to comply voluntarily with a moratorium. For complete text, see Legislation on Foreign Relations, vol. II, page 143.

[2] 62 Stat. 1716: TIAS 1849: 4 Bevans 248; 161 UNTS 62.

(j) Whaling: The word "whaling" means the scouting for, hunting, killing, taking, towing, holding onto, and flensing of whales, and the possession, treatment, or processing of whales or of whale products.

(k) Regulations of the Commission: The words "regulations of the Commission" mean the whaling regulations in the schedule annexed to and constituting a part of the convention in their original forms or as modified, revised, or amended by the Commission from time to time, in pursuance of article V of the convention.

(l) Regulations of the Secretary of Commerce: [3] The words "regulations of the Secretary of Commerce" means such regulations as may be issued by the Secretary of Commerce, from time to time, in accordance with sections 11 and 12 of this Act.

Sec. 3. (a) The United States Commissioner shall be appointed by the President, on the concurrent recommendations of the Secretary of State and the Secretary of Commerce, and shall serve at the pleasure of the President.

(b) The President may appoint a Deputy United States Commissioner, on the concurrent recommendations of the Secretary of State and the Secretary of Commerce. The Deputy United States Commissioner shall serve at the pleasure of the President and shall be the principal technical adviser to the United States Commissioner, and shall be empowered to perform the duties of the Commissioner in case of the death, resignation, absence, or illness of the Commissioner.

(c) The United States Commissioner and Deputy Commissioner, although officers of the United States Government, shall receive no compensation for their services.

Sec. 4. The Secretary of State is authorized, with the concurrence of the Secretary of Commerce, to present or withdraw any objections on behalf of the United States Government to such regulations or amendments of the schedule to the convention as are adopted by the Commission and submitted to the United States Government in accordance with article V of the convention. The Secretary of State is further authorized to receive on behalf of the United States Government reports, requests, recommendations, and other communications of the Commission, and to act thereon either directly or by reference to the appropriate authority.

Sec. 5. (a) It shall be unlawful for any person subject to the jurisdiction of the United States (1) to engage in whaling in violation of the convention or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of Commerce; (2) to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or whale products taken or processed in violation of the convention, or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of Commerce; (3) to fail to make, keep, submit, or furnish any record or report required of him by the convention, or by any regulation of the Commission, or by any regulation of the Secretary of Commerce, or to refuse to permit any officer authorized to enforce the convention,

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[3] Reorg. Plan No. 4 of 1970, 35 F.R. 15627, 84 Stat. 2090 substituted the "Secretary of Commerce" for the "Secretary of the Interior" and the "Department of Commerce" for the "United States Fish and Wildlife Service of the Department of the Interior".

the regulations of the Commission, this Act, and the regulations of the Secretary of Commerce, to inspect such record or report at any reasonable time.

(b) It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to do any act prohibited or to fail to do any act required by the convention, or by this Act, or by any regulation adopted by the Commission, or by any regulation of the Secretary of Commerce.

Sec. 6. (a) No person shall engage in whaling without first having obtained an appropriate license or scientific permit. Such licenses shall be issued by the Secretary of Commerce or such officer or the Department of the Interior as may be designated by him: *Provided,* That the Secretary, in his discretion and by appropriate regulation, may waive the payment of any license fee or the requirement that a license first be obtained, in connection with the salvage of any "Dauhval" or unclaimed dead whale found floating or stranded.

(b) The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable except under such conditions as may be prescribed by the Secretary:

(1) Land-station license for primary processing of whales, $250.

(2) Land-station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(3) Factory-ship license for primary processing of whales delivered by whaler catchers, $250.

(4) License for any vessel used exclusively for transporting whale products from a factory ship to a port during the whaling season, $100.

(5) Whale-catcher license, $100.

(c) All moneys derived from the issuance of whaling licenses shall be covered into the Treasury of the United States, and no license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

(d) Any person, in making application for a license to operate a whale catcher, must furnish evidence or affidavit satisfactory to the Secretary of Commerce that, in addition to conforming to other applicable laws and regulations, (1) the whale catcher is adequately equipped and competently manned to engage in whaling in accordance with the provisions of the convention, the regulations of the Commission, and the regulations of the Secretary of Commerce; (2) gunners and crews will be compensated on some basis that does not depend primarily on the number of whales taken; and (3) no bonuses or other partial remuneration with relation to the number of whales taken shall be paid to gunners and crews in respect of the taking of any whales, the taking of which is prohibited.

(e) Any person, in making application for a license to operate a land station or a factory ship must furnish evidence or affidavits to the satisfaction of the Secretary of Commerce that, in addition to conforming to other applicable laws and regulations, such land station or factory ship is adequately equipped to comply with provisions of the convention, of the regulations of the Commission, and

of the regulations of the Secretary of Commerce with respect to the processing of whales or the manufacture of whale products.

Sec. 7. Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the convention or by any regulation of the Commission, or by this Act, or by a regulation of the Secretary of Commerce, or any person who furnishes a false return, record, or report, upon conviction, shall be subject to such fine as may be imposed by the court not to exceed $500, and shall in addition be prohibited from whaling, processing, or possessing whales, and whale products from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 8 of this Act shall not be invoked for failure to comply with requirements respecting returns, records, and reports.

Sec. 8. Except as to violations defined in clause 3 of subsection (a) of section (5) of this Act, any person violating any provision of the convention, or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of Commerce upon conviction, shall be fined not more than $10,000 or be imprisoned not more than one year, or both. In addition the court may prohibit such person from whaling for such period of time as it may determine, and may order forfeited, in whole or in part, the whales taken by such person in whaling during the season, or the whale products derived therefrom or the monetary value thereof. Such forfeited whales or whale products shall be disposed of in accordance with the direction of the court.

Sec. 9. (a) Any duly authorized enforcement officer or employee of the Department of Commerce; [3] any Coast Guard officer; any United States marshal or deputy United States marshal; any customs officer; and any other person authorized to enforce the provisions of the convention, the regulations of the Commission, this Act, and the regulations of the Secretary of Commerce, shall have power, without warrant or other process but subject to the provisions of the convention, to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of the convention or of this Act, or of the regulations of the Commission, or of the regulations of the Secretary of Commerce and to take such person immediately for examination before a justice or judge or any other official designated in section 3041 of title 18 of the United States Code; and shall have power, without warrant or other process, to search any vessel subject to the jurisdiction of the United States or land station when he has reasonable cause to believe that such vessel or land station is engaged in whaling in violation of the provisions of the convention or this Act, or the regulations of the Commission, or the regulations of the Secretary of Commerce. Any person authorized to enforce the provisions of the convention, this Act, the regulations of the Commission, or the regulations of the Secretary of Commerce shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this Act, and shall have power with a search warrant to search any vessel, person, or

place at any time. The judges of the United States district courts and the United States magistrates [4] may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to the provisions of the convention, any person authorized to enforce the convention, this Act, the regulations of the Commission, and the regulations of the Secretary of Commerce may seize, whenever and wherever lawfully found, all whales or whale products taken, processed, or possessed contrary to the provisions of the convention, of this Act, of the regulations of the Commission, or of the regulations of the Secretary of Commerce.

Any property so seized shall not be disposed of except pursuant to the order of a court of competent jurisdiction or the provisions of subsection (b) of this section, or, if perishable, in the manner prescribed by regulations of the Secretary of Commerce.

(b) notwithstanding the provisions of section 2464 of title 28 of the United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation for double the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction, conditioned to deliver the property seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court.

Sec. 10. (a) In order to avoid duplication in scientific and other programs, the Secretary of State, with the concurrence of the agency, institution, or organization concerned, may direct the United States Commissioner to arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the convention.

(b) All agencies of the Federal Government are authorized, on request of the Commission, to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the Commission in the performance of its duties as prescribed by the convention.

Sec. 11. Nothing contained in this Act shall prevent the taking of whales and the conducting of biological experiments at any time for purposes of scientific investigation in accordance with scientific permits and regulations issued by the Secretary of Commerce or

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[4] "United States magistrates" was substituted for "United States commissioners" pursuant to Public Law 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, which provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under § 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under § 631 of Title 28: Judiciary and Judicial Procedure.

shall prevent the Commission from discharging its duties as prescribed by the convention.

Sec. 12. (a) The Secretary of Commerce is authorized and directed to administer and enforce all of the provisions of this Act and regulations issued pursuant thereto and all of the provisions of the convention and of the regulations of the Commission, except to the extent otherwise provided for in this Act, in the convention, or in the regulations of the Commission. In carrying out such functions he is authorized to adopt such regulations as may be necessary to carry out the purposes and objectives of the convention, the regulations of the Commission, this Act, and with the concurrence of the Secretary of State, to cooperate with the duly authorized officials of the government of any party to the convention.

(b) Enforcement activities under the provisions of this Act relating to vessels engaged in whaling and subject to the jurisdiction of the United States primarily shall be the responsibility of the Secretary of the Treasury in cooperation with the Secretary of Commerce.

(c) The Secretary of Commerce may authorize officers and employees of the coastal States of the United States to enforce the provisions of the convention, or of the regulations of the Commission, or of this Act, or of the regulations of the Secretary of Commerce. When so authorized such officers and employees may function as Federal law-enforcement officers for the purposes of this Act.

Sec. 13. Regulations of the Commission approved and effective in accordance with section 4 of this Act and article V of the convention shall be submitted for appropriate action or publication in the Federal Register by the Secretary of Commerce and shall become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations and the provisions of article V of the convention.

Sec. 14. There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of the convention and of this Act, including (1) contributions to the Commission for the United States share of any joint expenses of the Commission agreed by the United States and any of the other contracting governments, and (2) the expenses of the United States Commissioner and his staff, including (a) personal services in the District of Columbia and elsewhere, without regard to the civil service laws and the Classification Act of 1923, as amended; [5] (b) travel expenses without regard to the Travel Expense Act of 1949 [6] and section 73b of Title 5; [7] (c) transportation of things, communication services; (d) rent of offices; (e) printing and binding without regard to section 111 of Title 44 [8] and section 5 of Title 41; (f) steno-

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[5] The Classification Act of 1923, as amended, referred to in the text, was repealed by the Classification Act of 1949, Oct. 28, 1949, ch. 782, title XII, § 1202, 63 Stat. 972. Section 1106 of such act provided that wherever reference was made to the Classification Act of 1923 it should be deemed a reference to the Classification Act of 1949. The Classification Act of 1949 is now covered by ch. 51 and subch. III 53 of title 5, Government Organization and Employees.

[6] The Travel Expense Act of 1949, referred to in the text, is now covered by sec. 5701 et seq. of title 5.

[7] Sec. 73b of title 5, referred to in the text, is now covered by sec. 5731 of title 5.

[8] Sec. 111 of title 44, referred to in the text, is now covered by sec. 501 of title 44: Public Printing and Documents.

graphic and other services by contract, if deemed necessary, without regard to section 5 of Title 41; (g) supplies and materials; (h) equipment; (i) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, and research vessels.

Sec. 15. If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

Sec. 16. The Whaling Treaty Act of May 1, 1936 (49 Stat. 1246; 16 U.S.C. 901–915), is hereby repealed and the Secretary of Commerce is authorized to refund any part of a license fee paid under said Act that is in excess of the license fee required under this Act.

6. Wildlife Sanctuary for Humpback Whales

Public Law 99-630 [H.J. Res. 67], 100 Stat. 3514, approved November 7, 1986

JOINT RESOLUTION Calling for a wildlife sanctuary for humpback whales in the West Indies.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President shall, in concert with the International Whaling Commission, seek a treaty or other appropriate international agreement establishing a wildlife sanctuary for humpback whales in the West Indies, in the area encompassing the Turks Islands, Mouchoir Passage, Silver Bank Passage, Navidad Bank, and such additional areas in the West Indies as may be necessary to ensure the protection of the breeding grounds of the humpback whales.

7. Atlantic Salmon Convention Act of 1982 [1]

Title III of Public Law 97-389 [H.R. 3942], 96 Stat. 1949 at 1951, approved December 29, 1982, as amended by Public Law 98-44 [S. 625], 97 Stat. 216, approved July 12, 1983

AN ACT To amend the Commercial Fisheries Research and Development Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

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TITLE III—NORTH ATLANTIC SALMON TREATY

SEC. 301. This title may be cited as the "Atlantic Salmon Convention Act of 1982".

SEC. 302. As used in this title, the term—

(1) "Act of 1976" means the Act entitled "An Act to provide for the conservation and management of the fisheries, and for other purposes", approved April 13, 1976 (16 U.S.C. 1801 et seq.);

(2) "Commission" means any of the Commissions of the Organization that are established by the Convention;

(3) "Commissioner" means a United States Commissioner appointed under section 403 of this title;

(4) "Convention" means the Convention for the Conservation of Salmon in the North Atlantic Ocean, signed at Reykjavik, Iceland, on March 2, 1982;

(5) "Council" means the Council established by the Convention;

(6) "fishing" has the same meaning as such term has in section 3(10) of the Act of 1976 (16 U.S.C. 1802(10));

(7) "Organization" means the North Atlantic Salmon Conservation Organization established under the Convention;

(8) "person" has the same meaning as such term has in section 3(19) of the Act of 1976 (16 U.S.C. 1802(19)); and

(9) "salmon" means all species of salmon which migrate in or into the waters of the Atlantic Ocean north of 36 degrees north latitude.

SEC. 303. (a) The United States shall be represented on the Council and Commissions by three United States Commissioners to be appointed by the President to serve at his pleasure. Of such Commissioners, one shall be an official of the United States Government, and two shall be individuals (not officials of the United States Government) who are knowledgeable or experienced con-

[1] 16 U.S.C. 3601-3608.

cerning the conservation and management of salmon of United States origin.

(b) The Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the Interior, may designate alternate United States Commissioners. In the absence of a Commissioner appointed under subsection (a) of this section, an alternate Commissioner may exercise at any meeting of the Organization, the Council, or any Commission all functions of such Commissioner.

(c) Individuals who serve as Commissioners and alternate Commissioners shall not receive any compensation for such service. Such individuals shall not [2] be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

(d) In carrying out their functions under the Convention, the Commissioners may consult with the appropriate Regional Fishery Management Councils established by section 302 of the Act of 1976 (16 U.S.C. 1852), and may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to consultations described in this subsection.

SEC. 304. (a) The Secretary of State may—

(1) receive, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of the Organization and its subsidiary organs;

(2) with the concurrence of the Secretary of Commerce and the Secretary of the Interior, approve, object to, or withdraw objections to regulatory measures proposed in accordance with the Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed regulatory measure.

(b) If the concurrence required under subsection (a)(2) of this section has not been obtained by the Secretary of State—

(1) regarding the approval of, or the objection to, a proposed regulatory measure within forty-five days after the measure was received on behalf of the United States; or

(2) regarding the withdrawal of an objection of the United States to a proposed regulatory measure within forty-five days after such withdrawal is proposed by the Secretary of State;

the Secretary of State shall submit the matter in disagreement, together with a statement of the opposing positions, to the President for timely disposition.

SEC. 305. (a) The Secretary of Commerce, in cooperation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations pursuant to section 553 of title 5, United States Code, as may be necessary to carry out the purposes and objectives of the Convention and this title, and to implement regulatory measures that

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[2] Sec. 102(1) of Public Law 98-44 (97 Stat. 216) added the word "not".

are binding on the United States under the Convention. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located.

(b) The Secretary of Commerce, in cooperation with the Secretary of the Interior, shall prepare all statements, reports, and notifications required by articles 14 and 15 of the Convention and submit such documents to the Secretary of State for transmission to the Organization.

SEC. 306. (a) In carrying out the provisions of the Convention, the Secretary of Commerce, in consultation with the Secretary of the Interior, may arrange for the cooperation of agencies of the United States and the States, and of private institutions and organizations.

(b) Appropriate agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention. Such agencies may accept reimbursement from the Organization for providing such services, facilities, and personnel.

SEC. 307. (a) It is unlawful for any person, or any vessel, subject to the jurisdiction of the United States—

(1) to conduct directed fishing for salmon in waters seaward of twelve miles from the baselines from which the breadths of territorial seas are measured, in waters of the Atlantic Ocean north of 36 degrees north latitude; or

(2) to violate any provision of the Convention or this title, or of any regulation promulgated under this title.

(b) Any person who commits any act that is unlawful under subsection (a) of this section shall—

(1) be liable to the United States for a civil penalty under section 308 of the Act of 1976 (16 U.S.C. 1858) to the same extent as if such act were an act prohibited under section 307 of the Act of 1976 (16 U.S.C. 1857); and

(2) be guilty of an offense under section 309 of the Act of 1976 (16 U.S.C. 1859) to the same extent as if such act were an act prohibited by section 307(1) (D), (E), (F), or (H) of the Act of 1976 (16 U.S.C. 1857(1) (D), (E), (F), or (H)).

(c) [3] Any vessel used, and any fish (or the fair market value thereof) taken or retained in any manner, in connection with or as the result of the commission of an act which is unlawful under subsection (a) of this section shall be subject to civil forfeiture under section 310 of the Act of 1976 (16 U.S.C. 1860) to the same extent as if such vessel was used in, or such fish was taken or retained in connection with or as the result of, the commission of an act prohibited by section 307 of the Act of 1976 (16 U.S.C. 1857).

SEC. 308. The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and any regulation issued under this title. For purposes of such enforcement, such provisions and regulations shall be considered to be provisions of the Act of 1976 to

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[3] Sec. 102(2) of Public Law 98-44 (97 Stat. 216) amended and restated subsec. (c).

which section 311 (a), (b), (c), and (d) of the Act of 1976 (16 U.S.C. 1861 (a), (b), (c), and (d), respectively) apply.

SEC. 309. There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the Commissioners and alternate Commissioners in accordance with the Federal Travel Regulation and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States contribution to the Organization as provided in Article 16 of the Convention, not to exceed $50,000 for fiscal year 1983, and not to exceed, for each succeeding fiscal year, the amount assessed by the Organization for the United States for such year.

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8. Pacific Salmon Treaty Act of 1985

Public Law 99–5 [H.R. 1093], 99 Stat. 7, approved March 15, 1985

AN ACT To give effect to the Treaty Between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Pacific Salmon Treaty Act of 1985".

SEC. 2. DEFINITIONS.[1]

As used in this title, unless the context otherwise requires, the term—

(a) "Commission" means the Pacific Salmon Commission established by the Treaty;

(b) "enhancement" means manmade improvements to natural habitats, or the application of artificial fish culture technology, that will lead to the increase of salmon stocks;

(c) "Magnuson Act" means the Act entitled "the Magnuson Fishery Conservation and Management Act," as approved April 13, 1976, and as later amended (16 U.S.C. section 1801 et seq.);

(d) "Panel" means any of the Panels established by the Treaty;

(e) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State);

(f) "salmon" means any anadromous species of the family Salmonidae and genus Oncorhynchus, commonly known as Pacific salmon, including but not limited to:

Popular names	Scientific name
Chinook or King Salmon	Oncorhynchus tshawytscha
Coho or Silver Salmon	Oncorhynchus kisutch
Pink or Humpback Salmon	Oncorhynchus gorbuscha
Chum or Dog Salmon	Oncorhynchus keta
Sockeye or Red Salmon	Oncorhynchus nerka

and shall also include Steelhead (Salmo gairdneri);

(g) "Secretary" means the Secretary of Commerce;

(h) "Treaty" means the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985;

[1] 16 U.S.C. 3631.

(i) "treaty Indian tribe" means any of the federally recognized Indian tribes of the Columbia River basin, Washington coast or Puget Sound areas having reserved fishing rights to salmon stocks subject to the Treaty under treaties with the United States Government; and

(j) "United States Section" means the four United States Commissioners appointed by the President pursuant to this title.

SEC. 3.[2] UNITED STATES SECTION.

(a) COMMISSIONERS.—The United States shall be represented on the Commission by four United States Commissioners who are knowledgeable or experienced concerning Pacific salmon, to be appointed by and serve at the pleasure of the President. Of these, one shall be an official of the United States Government who shall be a nonvoting member of the United States Section; one shall be a resident of the State of Alaska and shall be appointed from a list of at least six qualified individuals nominated by the Governor of that State; one shall be a resident of the States of Oregon, or Washington and shall be appointed from a list of at least six qualified individuals nominated by the Governors of those States; and one shall be appointed from a list of at least six qualified individuals nominated by the treaty Indian tribes of the States of Idaho, Oregon or Washington. Two of the initial appointments shall be for two-year terms; all other appointments shall be for four-year terms. Each Commissioner is eligible for reappointment. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Unless otherwise agreed, the chairmanship of the United States Section shall rotate annually among all four members with the order of rotation determined by lot at the first meeting.

(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary and the Secretary of the Interior, shall designate an Alternate Commissioner for each Commissioner from the respective lists referred to in section 3(a), and may designate an Alternate Commissioner for the Federal Commissioner. In the absence of a Commissioner, the Alternate Commissioner may exercise all functions of such Commissioner at any meeting of the Commission or of the United States Section. Alternate Commissioners are eligible for reappointment and may attend all meetings of the United States Section.

(c) SOUTHERN PANEL.—The United States shall be represented on the southern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Oregon, with salmon fishery management responsibility and expertise;

(3) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(4) two shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise; and

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[2] 16 U.S.C. 3632.

(5) one shall be appointed from the commercial or recreational sector who is knowledgeable and experienced in the salmon fisheries for which the southern Panel is responsible.

(d) NORTHERN PANEL.—The United States shall be represented on the northern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and

(3) four shall be individuals knowledgeable and experienced in the salmon fisheries for which the northern Panel is responsible.

(e) FRASER RIVER PANEL.—The United States shall be represented on the Fraser River Panel by four Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(3) one shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise for the fisheries for which the Fraser River Panel is responsible; and

(4) one shall be appointed from the commercial sector of the salmon fishing industry concerned with fisheries for which the Fraser River Panel is responsible.

(f) PANEL APPOINTMENTS.—Panel members described in subsections (c)(2), (c)(3), (d)(2), and (e)(2) shall be appointed by the Governor of the applicable State. Panel members described in subsections (c)(4) and (e)(3) shall be appointed by the Secretary of the Interior from lists of nominations provided by the appropriate treaty Indian tribes. All other Panel members shall be appointed by the Secretary: *Provided,* That at least one member of the northern Panel shall be a voting member of the North Pacific Fishery Management Council, at least one member of the southern Panel shall be a voting member of the Pacific Fishery Management Council; and the Panel members described in subsections (c)(5), (d)(3), and (e)(4) shall be appointed from lists of nominations provided by the Governors of the applicable States. The appointing authorities listed above may also designate an alternate Panel member, meeting the same qualifications and having the same term of office, to serve in the absence of a Panel member appointed under this subsection. Panel members and alternate Panel members, other than the southern Panel member described in subsection (c)(5), shall serve four-year terms; except that the Secretary of State shall designate one-half of the initial appointments to each Panel as serving two-year terms. The southern Panel member described in subsection (c)(5) and the corresponding alternate shall each be appointed for one-year terms; the first such member shall be appointed from the commercial sector and an alternate shall be appointed from the recreational sector, with the alternate succeeding to the member position in the subsequent year; thereafter the member and alternate positions shall rotate between the commercial and recreational sectors on an annual basis. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall

be appointed for the remainder of that term. Panel members and alternates shall be eligible for reappointment and may attend all meetings of the relevant United States Panel Section.

(g) VOTING REQUIREMENTS.—(1) The United States Section shall operate with the objective of attaining consensus decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken when there is no dissenting vote.

(2) All decisions and recommendations of the United States Section of the northern and southern Panels shall require the concurring vote of a majority of the United States Panel members present and voting, except that decisions and recommendations of the southern Panel shall require the concurring vote of the members designated in subsections (c)(2) and (c)(3) and one of those members designated in subsection (c)(4).

(3) All decisions and recommendations of the United States Section of the Fraser River Panel shall require the concurring vote of all United States Panel members present and voting, except that orders referred to in article VI(6) of the Treaty may be agreed to on the basis of a majority, provided that the Panel members representing the State and Tribal fishery management authorities concur.

(4) All decisions and recommendations of any joint Panel shall require the concurring votes of each Panel under the voting rules specified in paragraphs (2) and (3).

(5) To assist in the resolution of disputes affecting decisions of the United States Section or of the United States Panel sections, a three-person Conciliation Board may be established. The members of the Conciliation Board shall be selected by the United States Section as follows; each non-Federal Commissioner shall submit a list of no fewer than three qualified nominees; one person shall be selected from each list by consensus decision of the Federal Commissioner and the other two non-Federal Commissioners. The Conciliation Board shall operate under such bylaws as may be established by the United States Section.

(6) In any matter where the Fraser River Panel is unable to act because the United States Fraser River Panel members have been unable to reach a decision in accordance with paragraph (3) of this subsection, and upon a determination by the Chairman of the subsection, and upon a determination by the Chairman of the United States Section that an action of the Panel is required, the United States Section shall act for the United States Panel members in the Fraser River Panel.

(7) In any matter where the Secretary of State determines that the United States is in jeopardy of not fulfilling its international obligations under the Treaty, the Secretary of State shall so certify to the United States Section. Such certification shall include the reasons for such determination and shall specify the date by which a decision by the United States Section is desired. If the United States Section has not reached a decision by the date specified, the Secretary of State, after consultation with the Secretary and the Secretary of the Interior, shall report on the matter to the President.

(h) CONSULTATION.—In carrying out their functions under the Treaty, the Commissioners and Panel members may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply.

SEC. 4.[3] AUTHORITY AND RESPONSIBILITY.

(a) The Secretary of State is authorized to—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of and to the Commission and Panels;

(2) in consultation with the Secretary and the Secretary of the Interior, approve, disapprove, object to, or withdraw objections to fishery regimes, including enhancement programs and Fraser River Panel regulations proposed in accordance with the Treaty, on the condition that the United States shall be obligated to carry out such regimes or regulations only to the extent that funds are made available for such purposes in appropriation Acts; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed fishery regime or Fraser River Panel regulation.

(b) Recommendations of the Commission on fishery regimes or Fraser River Panel regulations approved by the Secretary of State pursuant to subsection (a)(2) shall be forwarded immediately to the States of Alaska, Oregon, Washington, and Idaho and to the treaty Indian tribes, as appropriate. In the exercise of their general fishery management authority, the States and treaty Indian tribes may adopt corresponding laws, regulations, or orders within their respective jurisdictions.

(c) In cooperation with the appropriate Regional Fishery Management Councils, States and treaty Indian tribes, the Secretary shall prepare, as appropriate, all statements, reports, and information required by the Treaty and submit such documents to the Secretary of State, who shall transmit them to the Commission.

SEC. 5.[4] INTERAGENCY COOPERATION.

(a) In carrying out the provisions of the treaty and this title, the Secretary, in consultation with the Secretary of the Interior, may arrange for cooperation with agencies of the United States, the States, treaty Indian tribes, private institutions and organizations, and may execute such memoranda as may be necessary to reflect such agreements.

(b) Agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Commission and Panels in carrying out their responsibilities under the Treaty. Such agencies may accept reimbursement from the Commission for providing such services, facilities, and personnel.

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[3] 16 U.S.C. 3633.
[4] 16 U.S.C. 3634.

SEC. 6.[5] PREEMPTION.

If any State or treaty Indian tribe has taken any action, or omitted to take any action, the results of which place the United States in jeopardy of not fulfilling its international obligations under the Treaty, or any fishery regime or Fraser River Panel regulation adopted thereunder, the Secretary shall inform the State or tribe of the manner in which the action or inaction places the United States in jeopardy of not fulfilling its international obligations under the Treaty, of any remedial action which would relieve this concern, and of the intention to promulgate Federal regulations if such remedial actions are not undertaken within fifteen days unless an earlier action is required to avoid violation of United States Treaty obligations. Should United States action be required to meet Treaty obligations to Canada in respect to treaty Indian fisheries conducted in terminal areas subject to the continuing jurisdiction of a United States district court, such action shall be taken within the framework of such court jurisdiction. Otherwise, regulations may be promulgated by the Secretary pursuant to section 7(a) of this title which shall supersede any State or treaty Indian tribal law, regulation or order determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty. Timely notice of all such determinations shall be disseminated by electronic media and shall be published in local newspapers in the major fishing ports affected and in the Federal Register. In order to enable the United States to fulfill its obligations under article IV(7) of the Treaty, the States of Alaska, Idaho, Oregon and Washington and the treaty Indian tribes shall advise the Secretary of all pertinent laws or regulations pertaining to the harvest of Pacific salmon, together, with such amendments thereto as may be adopted from time to time.

SEC. 7.[6] RULEMAKING.

(a) The Secretary, in consultation with the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating and the appropriate Regional Fishery Management Council, shall promulgate such regulations as may be necessary to carry out the United States international obligations under the Treaty and this title, pursuant to section 6, as well as conforming amendatory regulations applicable to the United States Exclusive Economic Zone. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located. Such regulations as are necessary and appropriate to carry out obligations of the United States under the Treaty involving a foreign affairs function, and as such shall not be subject to sections 4 through 8 of the Administrative Procedure Act (5 U.S.C. 553–557), or the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(b) The Secretary, in cooperation with the Regional Fishery Management Councils, States, and treaty Indian tribes, may promulgate regulations applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with,

[5] 16 U.S.C. 3635.
[6] 16 U.S.C. 3636.

fishery regimes and Fraser River Panel regulations adopted under the Treaty. Such regulations shall not discriminate between residents of different States.

(c) Regulations promulgated by the Secretary under this title shall be subject to judicial review by the district courts of the United States to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code; except that section 705 of such title is not applicable, and the appropriate court shall only set aside any such regulation on a ground specified in section 706(2 (A), (B), (C) or (D) of such title. A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

SEC. 8.[7] PROHIBITED ACTS AND PENALTIES.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States—

(1) to violate any provision of this title, or of any regulation adopted hereunder, or of any Fraser River Panel regulation approved by the United States under the Treaty;

(2) to refuse to permit any officer authorized to enforce the provisions of this title to broad a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this title;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this title; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) Any person who commits any act that is unlawful under subsection (a) of this section be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. 1858).

(c) Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) of this section shall be guilty of an offense punishable as provided by section 309(b) of the Magnuson Act (16 U.S.C. 1859(b)).

(d)(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act which is prohibited under subsection (a) of this section, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act which is prohibited by subsection (a) of this section, shall be subject to forfeiture as provided by section 310 of the Magnuson Act (16 U.S.C. 1860).

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[7] 16 U.S.C. 3637.

(2) Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulation of the Secretary.

(e) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall enforce the provisions of this title and shall have the authority provided by subsections 311 (a), (b)(1), and (c) of the Magnuson Act (16 U.S.C. 1861 (a), (b)(1), and (c)).

(f) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

(1) enter restraining orders or prohibitions,

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

SEC. 9.[8] GENERAL STANDARDS.

All actions taken under section 3(g), 4, 6, and 7 shall—

(a) take into account the best scientific information available;

(b) result in measures necessary and appropriate for the conservation, management, utilization and development of the Pacific salmon resource, with due consideration of social and economic concerns; and

(c) be consistent with United States obligations under the Treaty, domestic Indian treaties and other applicable law.

SEC. 10.[9] ADVISORY COMMITTEE.

(a) The United States Section shall appoint an advisory committee of not less than twelve but not more than twenty members who are knowledgeable and experienced with respect to fisheries subject to the Treaty. One-half the membership of the committee shall be residents of the State of Alaska and one member shall be a resident of the State of Idaho. Each member shall serve a term of two years and shall be eligible for reappointment.

(b) Members of the advisory committee may attend all public meetings of the Commission and Panels and all nonexecutive sessions of the United States Section and United States Panel sections. At nonexecutive meetings of the United States Section and United States Panel sections, members of the advisory committee shall be given the opportunity to examine and to be heard on any nonadministrative matter under consideration.

(c) The members of the advisory committee shall receive no compensation for their services as such members.

(d) The Chairman of the United States Section shall call a meeting of the advisory committee at least one time each year.

SEC. 11.[10] ADMINISTRATIVE MATTERS.

(a) Commissioners and Alternate Commissioners who are not State or Federal employees shall receive compensation at the daily

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[8] 16 U.S.C. 3638.
[9] 16 U.S.C. 3639.
[10] 16 U.S.C. 3640.

rate of GS–18 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(b) Panel Members and Alternate Panel Members who are not State or Federal employees shall receive compensation at the daily rate of GS–16 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(c) Travel and other necessary expenses shall be paid for all United States Commissioners, Alternate Commissioners, Panel Members, Alternate Panel Members, members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties for the United States Section or for the Commission.

(d) Except for officials of the United States Government, such individuals shall not be considered to be Federal employees while engaged in the actual performance of duties for the United States Section or for the Commission, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 71 of title 28, United States Code,

SEC. 12.[11] AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this title including—

(a) necessary travel expenses of the Commissioners, Panel members, alternate Commissioners, alternate Panel members, United States members of joint technical committees established under article IV of the Treaty, and advisory committee members in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

(b) the United States share of the joint expenses of the Commission. *Provided,* That the United States Commissioners and Panel members and alternates shall not, with respect to commitments concerning the United States share of the joint expenses of the Organization, be subject to section 262b of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments;

(c) amounts for research, enhancement, and other activities necessary to carry out the purposes of the Treaty and this title; and

(d) such amounts as may be due to settle accounts upon termination of the International Pacific Salmon Fisheries Commission.

SEC. 13. REPEALER.

The Sockeye Salmon or Pink Salmon Fishing Act of July 29, 1947 (16 U.S.C. 776–776f), as amended by the Act of July 11, 1957, sections 1–3, is repealed, effective December 31, 1985. The Secretary of

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[11] 16 U.S.C. 3641.

State shall dispose of any United States property held by the International Pacific Salmon Fisheries Commission on the date of its termination in a manner which would further the purposes of this title.

SEC. 14.[12] SAVINGS.

This title shall not be interpreted or applied so as to affect or modify rights established in existing Indian treaties and other existing Federal laws, including the Order entered in Confederated Tribes and Bands of the Yakima Indian Nation v. Baldrige, Civil No. 80-342 (WD WASH.). This section shall not be interpreted or applied so as to affect or modify any rights or obligations of the United States pursuant to the Treaty.

SEC. 15.[13] RESTRICTION ON SPENDING AUTHORITY.

New spending authority or authority to enter into contracts provided in this Act shall be effective only to such extent, or in such amounts, as are provided in advance in appropriation Acts.

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[12] 16 U.S.C. 3643.
[13] 16 U.S.C. 3644.

9. United States Fishery Export Promotion

Partial text of Public Law 96-561 [S. 2163], 94 Stat. 3275 at 3290, approved December 22, 1980

AN ACT To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

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SEC. 211. UNITED STATES FISHERY TRADE OFFICERS.

(a) APPOINTMENT.—For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve aboard to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

(b) ASSIGNMENT.—Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) FUNCTIONS OF FISHERY TRADE OFFICERS.—The functions of fishery trade officers appointed under subsection (a) shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

(2) to develop, maintain, and make available to interested persons listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or in-

centives of such nation or area that affect imports of such products;

(4) to prepare weekly statements regarding the prices for each fishery product for which there may be United States export potential to the foreign nation or area concerned; and

(5) to carry out such other functions as the Secretary may require.

(d) ADMINISTRATION.—The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

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10. Driftnet Impact Monitoring, Assessment, and Control

Title IV of Public Law 100-220 [United States-Japan Fishery Agreement Approval Act of 1987; H.R. 3674], 100 Stat. 1458, approved December 29, 1987

AN ACT To provide congressional approval of the Governing International Fishery Agreements between the United States and Japan; to implement the provisions of Annex V to the International Convention for the Prevention of Pollution from Ships, 1973; to reauthorize the National Sea Grant College Program Act; to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE IV—DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL

SEC. 4001. SHORT TITLE.

This title may be cited as the "Driftnet Impact Monitoring, Assessment, and Control Act of 1987."

SEC. 4002. FINDINGS

The Congress finds that—

(1) the use of long plastic driftnets is a fishing technique that may result in the entanglement and death of enormous numbers of target and nontarget marine resources in the waters of the North Pacific Ocean, including the Bering Sea;

(2) there is a pressing need for detailed and reliable information on the number of marine resources that become entangled and die in actively fished driftnets and in driftnets that are lost, abandoned, or discarded; and

(3) increased efforts are necessary to monitor, assess, and reduce the adverse impacts of driftnets.

SEC. 4003. DEFINITIONS.

As used in this title—

(1) DRIFTNET.—The term "driftnet" means a gillnet composed of a panel of plastic webbing one and one-half miles or more in length.

(2) DRIFTNET FISHING.—The term "driftnet fishing" means a fish-harvesting method in which a driftnet is placed in water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(3) EXCLUSIVE ECONOMIC ZONE OF THE UNITED STATES.—The term "exclusive economic zone of the United States" means the zone defined in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(b)).

(4) MARINE RESOURCES.—The term "marine resources" includes fish, shellfish, marine mammals, seabirds, and other forms of marine life or waterfowl.

(5) MARINE RESOURCES OF THE UNITED STATES.—The term "marine resources of the United States" means—

(A) marine resources found in, or which breed within, areas subject to the jurisdiction of the United States, including the exclusive economic zone of the United States; and

(B) species of fish, wherever found, that spawn in the fresh or estuarine waters of the United States.

(6) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

SEC. 4004. MONITORING AGREEMENTS

(a) NEGOTIATIONS.—The Secretary, through the Secretary of State and in consultation with the Secretary of the Interior, shall immediately initiate, negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded, or lost by the foreign government's driftnet fishing vessels. Such agreements shall provide for—

(1) the use of a sufficient number of vessels from which scientists of the United States and the foreign governments may observe and gather reliable information; and

(2) appropriate methods of sharing equally the costs associated with such activities.

(b) REPORT.—The Secretary, in consultation with the Secretary of State, shall provide to the Congress not later than 1 year after the date of enactment of this Act a full report on the results of negotiations under this section.

SEC. 4005. IMPACT REPORT.

(a) IN GENERAL.—The Secretary shall provide to the Congress within 1 year after the date of the enactment of this Act, and at such other times thereafter as the Secretary considers appropriate, a report identifying the nature, extent, and effects of driftnet fishing in waters of the North Pacific Ocean on marine resources of the United States. The report shall include the best available information on—

(1) the number and flag state of vessels involved;

(2) the areas fished;

(3) the length, width, and mesh size of driftnets used;

(4) the number of marine resources of the United States killed by such fishing;

(5) the effect of seabird mortality, as determined by the Secretary of the Interior, on seabird populations; and

(6) any other information the Secretary considers appropriate.

(b) INFORMATION FROM FOREIGN GOVERNMENTS.—The Secretary, through the Secretary of State, shall—

(1) request relevant foreign governments to provide the information described in subsection (a), and

(2) include in a report under this section the information so provided and an evaluation of the adequacy and reliability of such information.

SEC. 4006. ENFORCEMENT AGREEMENTS.

(a) NEGOTIATIONS.—The Secretary shall immediately initiate, through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels. Such agreements shall include measures for—

(1) the effective monitoring and detection of violations;

(2) the collection and presentation of such evidence of violations as may be necessary for the successful prosecution of such violations by the responsible authorities;

(3) reporting to the United States of penalties imposed by the foreign governments for violations; and

(4) appropriate methods for sharing equally the costs associated with such activities.

(b) CERTIFICATION FOR PURPOSES OF FISHERMEN'S PROTECTIVE ACT OF 1967.—If the Secretary, in consultation with the Secretary of State, determines that a foreign government has failed, within 18 months after the date of the enactment of this Act, to enter into and implement an agreement under subsection (a) or section 4004(a) that is adequate, the Secretary shall certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

SEC. 4007. EVALUATIONS AND RECOMMENDATIONS.

(a) MARKING, REGISTRY, AND IDENTIFICATION SYSTEM.—The Secretary shall evaluate, in consultation with officials of other Federal agencies and such other persons as may be appropriate, the feasibility of and develop recommendations for the establishment of a driftnet marking, registry, and identification system to provide a reliable method for the determination of the origin by vessel, of lost, discarded, or abandoned driftnets and fragments of driftnets. In conducting such evaluation, the Secretary shall consider the adequacy of existing driftnet identification systems of foreign nations and the extent to which these systems achieve the objectives of this title.

(b) ALTERNATIVE DRIFTNET MATERIALS.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the use of alternative materials in driftnets for the purpose of

increasing the rate of decomposition of driftnets that are discarded or lost at sea.

(c) DRIFTNET BOUNTY SYSTEM.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of and develop appropriate recommendations for the implementation of a driftnet bounty system to pay persons who retrieve from the exclusive economic zone and deposit with the Secretary lost, abandoned, and discarded driftnet and other plastic fishing material.

(d) DRIFTNET FISHING VESSEL TRACKING SYSTEM.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the establishment of a cooperative driftnet fishing vessel tracking system to facilitate efforts to monitor the location of driftnet fishing vessels.

(e) REPORT.—The Secretary shall transmit to the Congress not later than 18 months after the date of the enactment of this Act a report setting forth—

(1) the evaluations and recommendations developed under subsections (a), (b), (c), and (d);

(2) the most effective and appropriate means of implementing such recommendations;

(3) any need for further research and development efforts and the estimated cost and time required for completion of such efforts; and

(4) any need for legislation to provide authority to carry out such recommendations.

SEC. 4008. CONSTRUCTION WITH OTHER LAWS.

This title shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in existing law on the date of the enactment of this Act.

SEC. 4009. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Commerce and the Department of State, such sums as may be necessary to carry out the purposes of this title.

11. Fishermen's Protective Act of 1967, as amended [1]

Public Law 83-680 [H.R. 9584], 68 Stat. 883, approved August 27, 1954, as amended by Public Law 90-482 [S. 2261], 82 Stat. 729, approved August 12, 1968; by Public Law 92-219 [H.R. 3304], 85 Stat. 286, approved December 23, 1971; by Public Law 92-569 [H.R. 7117], 86 Stat. 182, approved October 26, 1972; by Public Law 92-594 [S. 3545], 86 Stat. 1313, approved October 27, 1972; by Public Law 94-265 [H.R. 200], 90 Stat. 331 at 360, approved April 13, 1976; by Public Law 94-273 [S. 2445], 90 Stat. 375 at 377, approved April 21, 1976; by Public Law 95-194 [S. 1184], 91 Stat. 1413, approved November 18, 1977; by Public Law 95-376 [H.R. 10878], 92 Stat. 714, approved September 18, 1978; by Public Law 95-541 [H.R. 7749], 92 Stat. 2048, approved October 28, 1978; by Public Law 96-61 [S. 917], 96 Stat. 407, approved August 15, 1979; by Public Law 96-289 [H.R. 6614], 94 Stat. 605, approved June 28, 1980; by Public Law 96-561 [S. 2163], 94 Stat. 3275 at 3301, approved December 22, 1980; by Public Law 97-68 [S. 1191], 95 Stat. 1040, approved October 26, 1981; by Public Law 98-364 [H.R. 4997], 98 Stat. 440 at 444, approved July 17, 1984; by Public Law 99-659 [S. 991], 100 Stat. 3706; approved November 14, 1986; by Public Law 100-151 [H.R. 2893], 101 Stat. 884, approved November 3, 1987; by Public Law 100-350 [H.R. 4621], 102 Stat. 660, approved June 27, 1988; and by Public Law 100-711 [Mammal Protection Act Amendments of 1988; H.R. 4189], 102 Stat. 4755 at 4772, approved November 23, 1988

AN ACT To protect the rights of vessels of the United States on the high seas and in territorial waters of foreign countries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this Act [2] the term "vessel of the United States" shall mean any private vessel documented or certificated under the laws of the United States. Notwithstanding any other law, the documentation or certification of any such vessel shall not be considered to be affected, for the purposes of this Act, in any manner or to any extent if at any time during any voyage for the purpose of fishing beyond the fishery conservation zone [3] (as defined in section 3(8) of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(8)), the vessel is commanded by other than a citizen of the United States.[4]

Sec. 2.[5] If—

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[1] Public Law 90-482 provided that this act may be cited as the Fisherman's Protective Act of 1967.

[2] 22 U.S.C. 1971.

[3] The term "fishery conservation zone", as previously defined in sec. 3(8) of the Magnuson Fishery Conservation and Management Act of 1976, was replaced with the term "exclusive economic zone", by sec. 101(c)(2) of Public Law 99-659 (100 Stat. 3707).

[4] This sentence was added by sec. 14 of Public Law 95-541 (92 Stat. 2057).

[5] 22 U.S.C. 1972. Sec. 403(a) of the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265; 90 Stat. 360) amended and restated sec. 2. The amendments made by Sec. 403 became effective on Mar. 1, 1977. Sec. 2 formerly read as follows:

"Sec. 2. In any case where—

"(a) a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and

"(b) there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine, fee, or other direct charge which may be reimbursable under section 3(a)."

(1) [6] any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States;

(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

(A) are unrelated to fishery conservation and management,

(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Magnuson Fishery Conservation and Management Act of 1976), or

(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

the Secretary of State, unless there is clear and convincing credible evidence that the seizure did not meet the requirements under paragraph (1) or (2), as the case may be, shall immediately take such steps as are necessary—[7]

(i) for the protection of such vessel and for the health and welfare of its crew;

(ii) to secure the release of such vessel and its crew; and

(iii) to determine the amount of any fine, license fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.

Sec. 3.[8] (a) In any case where a vessel of the United States is seized by a foreign country under the conditions of section 2 and a fine, license fee, registration fee, or any other direct charge must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of State in the amount certified by him [9] as being the amount of

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[6] Sec. 303(a)(1) of Public Law 98-364 (98 Stat. 444) amended and restated par. (1). It previously read as follows:

"(1) any vessel of the United States is seized by a foreign country on the basis of claims by territorial waters or the high seas which are not recognized by the United States; or"

Sec. 303(c) of Public law 98-364 further stated that this amendment would apply with respect to seizures made after April 1, 1983, by foreign countries of vessels of the United States.

[7] Sec. 303(a)(2) of Public Law 98-364 (98 Stat. 444) substituted the text to this point after subpar. (D) in lieu of the following: "and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—"

Sec. 303(c) of Public Law 98-364 further stated that this amendment would apply with respect to seizures made after April 1, 1983 by foreign countries of vessels of the United States.

[8] 22 U.S.C. 1973. Public Law 90-482 amended sec. 3 by adding the words "license fee, registration fee, or any other direct charge." Public Law 92-569 made former sec. 3 subsection (a), added the last sentence, and added a new subsec. (b).

[9] Sec. 302(a)(1) of Public Law 98-364 (98 Stat. 444) substituted the phrase "Secretary of State in the amount certified by him" in lieu of the phrase "Secretary of the Treasury in the amount certified to him by the Secretary of State".

the fine, license fee, registration fee, or any other direct charge actually paid. For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.[10] Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 9.

(b) The Secretary of State shall make a determination and [11] certification under subsection (a) of this section as soon as possible after he is notified pursuant to section 2(b) of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and crew. The amount of reimbursement made by the Secretary State [11] to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of State [11] reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien.

Sec. 4.[12] The provisions of this Act shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any applicable convention or treaty, if that treaty or convention was made with advice and consent to the Senate and was in force and effect for the United States and the seizing country at the time of the seizure.[13]

Sec. 5.[14] The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by him [15] under section 3 as a result of the seizure of a vessel of the United States by such country;

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[10] The words to this point beginning with "For purposes of this section," were added by sec. 403(a)(2) of the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265; 90 Stat. 360). This amendment shall apply to seizures of vessels of the United States occurring on or after Dec. 31, 1974.

[11] Sec. 302(a)(2) of Public Law 98-364 (98 Stat. 444) amended subsec. (b) by inserting the words "determination and" in the first sentence, and by substituting the reference to the Secretary of State in lieu of a reference to the Secretary of the Treasury.

[12] 22 U.S.C. 1974.

[13] Sec. 303(b) of Public Law 98-364 (98 Stat. 444) substituted the words to this point in sec. 4 beginning with "any applicable convention or treaty," in lieu of the following: "any fishery convention or treaty to which the United States is a party." Sec. 303(c) of Public Law 98-364 further stated that this amendment would apply with respect to seizures made after April 1, 1983 by foreign countries of vessels of the United States.

[14] 22 U.S.C. 1975. Public Law 92-569 amended sec. 5 to read as above. Prior to that amendment it read as follows: "The Secretary of State shall take such action as he may deem appropriate to make and collect claims against a foreign country for amounts expended by the United States under the provisions of this Act (including payments made pursuant to section 7) because of the seizure of a vessel of the United States by such country. If such country fails or refuses to make payment in full within one hundred and twenty days after receiving notice of any such claim of the United States, the Secretary of State shall withhold, pending such payment, an amount equal to such unpaid claim from any funds programed for the current fiscal year for assistance to the government of such country (as shown in materials concerning such fiscal year presented to the Congress in connection with its consideration of amendments to the Foreign Assistance Act of 1961). Amounts withheld under this section shall not constitute satisfaction of any such claim of the United States against each foreign country," as amended by Public Law 90-482.

[15] Sec. 302(b) of Public Law 98-364 (98 Stat. 444) substituted "him" in lieu of a reference to the Secretary of the Treasury.

(B) any payment made pursuant to section 7 in connection with such seizure, and

(2) take such action as he deems appropriate to make and collect claims against such foreign country for the amounts so reimbursed and payments so made.

(b) If a foreign country fails or refuses to make payment in full on any claim made under subsection (a)(2) of this section within one hundred and twenty days after the date on which such country is notified pursuant to subsection (a)(1) of this section, the Secretary of State shall transfer an amount equal to such unpaid claim or unpaid portion thereof from any funds appropriated by Congress and programed for the current fiscal year for assistance to the government of such country under the Foreign Assistance Act of 1961 unless the President [16] certifies to the Congress that it is in the national interest not to do so in the particular instance (and if such funds are insufficient to cover such claim, transfer shall be made from any funds so appropriated and programed for the next and any succeeding fiscal year) to (1) the Fishermen's Protective Fund established pursuant to section 9 if the amount is transferred with respect to an unpaid claim for a reimbursement made under section 3, or (2) the separate account established in the Treasury of the United States pursuant to section 7(c) if the amount is transferred with respect to an unpaid claim for a payment made under section 7(a). Amounts transferred under this section shall not constitute satisfaction of any such claim of the United States against such foreign country.

Sec. 6.[17] There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.

Sec. 7.[18] (a) The Secretary, upon receipt of an application filed with him at any time after the effective date of this section by the owner of any vessel of the United States which is documented or certificated as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provisions of this section and such other terms and conditions as the Secretary deems appropriate. Such agreement shall provide that, if said vessel is seized by a foreign country and detained under the conditions of section 2 of this Act, the Secretary shall guarantee—

(1) the owner of such vessel for all actual costs, except those covered by section 3 of this Act, incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (A) from any damage

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[16] Executive Order 11772, Mar. 21, 1974, 39 F.R. 10879, provides the following:

"DELEGATING CERTAIN AUTHORITY OF THE PRESIDENT TO THE SECRETARY OF STATE

"By virtue of the authority vested in me by the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1971, *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, the Secretary of State is hereby designated and empowered to exercise, without ratification, or other action of the President, the function conferred upon the President by Section 5(b) of the Fishermen's Protective Act of 1967, as amended, of certifying to the Congress that it is in the national interest not to transfer to the Fishermen's Protective Fund or to the separate account established under the Act, pursuant to that Section, amounts appropriated by the Congress and programmed for assistance under the Foreign Assistance Act of 1961."

[17] 22 U.S.C. 1976.

[18] 22 U.S.C. 1977. Sec. 7 was added by Public Law 90-482. Public Law 92-569 added the next to last sentence in subsec. (c).

to, or destruction of, such vessel, or its fishing gear or other equipment, (B) from the loss of confiscation of such vessel, gear, or equipment, or (C) from dockage fees or utilities;

(2) the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and

(3) the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention, as determined by the Secretary of the Interior, based on the value of the average catch per day's fishing during the three most recent calendar years immediately preceding such seizure and detention of the vessel seized, or, if such experience is not available, then of all commercial fishing vessels of the United States engaged in the same fishery as that of the type and size of the seized vessel.

(b) Payments made by the Secretary under paragraphs (2) and (3) of subsection (a) of this section shall be distributed by the Secretary in accordance with the usual practices and procedures of the particular segment of the United States commercial fishing industry to which the seized vessel belongs relative to the sale of fish caught and the distribution of the proceeds of such sale.

(c) The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. The amount fixed by the Secretary shall be predicated upon at least 33⅓ per centum of the contribution by the Government. All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. Those fees not currently needed for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all revenues accruing from such deposits or investments shall be credited to such separate account.[19] If a transfer of funds is made to the separate account under section 5(b)(2) with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts.[20] All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

(d) All determinations made under this section shall be final. No payment under this section shall be made with respect to any losses covered by any policy of insurance or other provision of law.

(e)[21] The provisions of this section shall be effective until October 1, 1988; except that payments may be made under this section

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[19] This sentence was added by sec. 1 of Public Law 97-68 (95 Stat. 1040).

[20] This sentence was added by sec. 4 of Public Law 92-569 (86 Stat. 1183).

[21] Sec. 1 of Public Law 95-376 (92 Stat. 714) extended the date from Oct. 1, 1977, to Oct. 1, 1981, and added the text beginning with "except that * * *". The date was further extended to Oct. 1, 1984, by sec. 1(2) of Public Law 97-68 (95 Stat. 1040); to Oct. 1, 1987, by sec. 301 of Public Law 98-364 (98 Stat. 444); to October 1, 1988, by sec. 2 of Public Law 100-151 (101 Stat. 884); and to October 1, 1989, by sec. 2 of Public Law 100-350 (102 Stat. 660).

only to such extent and in such amounts as are provided in advance in appropriation Acts.

(f) For the purposes of this section—

(1) [22] the term "Secretary" means the Secretary of State.

(2) the term "owner" includes any charterer of a commercial fishing vessel.

Sec. 8.[23] (a)(1) [24] When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2) [24] When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3) [25] in administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) Promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).

(4) [24] Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of fish products (if the certification is made under paragraph (1)) or wildlife products (if the certification is made under paragraph (2)) from the offending country for such duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

(b) Within sixty days following certification by the Secretary of Commerce, or the Secretary of the Interior,[26] the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products or wildlife products [27] of the offending country, or if such prohibition does not cover all fish products or wildlife products [27] of the offending

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[22] Sec. 408 of Public Law 99-659 (100 Stat. 3740) substituted the term "Secretary of State" for "Secretary of Commerce." Previously, Public Law 92-594 had substituted "Secretary of Commerce" for "Secretary of the Interior".

[23] 22 U.S.C. 1978. Public Law 92-219 added sec. 8 to this Act.

[24] Sec. 2(1) of Public Law 95-376 (92 Stat. 714) added the paragraph designation "(1)", struck out the last sentence of subsec. (a), and added new pars. (2) and (3). Subsequently, sec. 3(6) of Public Law 96-61 (93 Stat. 408) redesignated par. (3) as par. (4).

[25] Par. (3) was added by sec. 3(b) of Public Law 96-61 (93 Stat. 408).

[26] Reference to the Secretary of the Interior was added by sec. 2(2)(A) of Public Law 95-376 (92 Stat. 714).

[27] The words "or wildlife products" were added by sec. 2 of Public Law 95-376 (92 Stat. 714).

country, the President shall inform the Congress of the reasons therefore.

(c) It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any fish products or wildlife products [27] prohibited by the Secretary of the Treasury pursuant to this section.

(d) [28] After making a certification to the President under subsection (a), the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.

(e) [28] (1) Any person violating the provisions of this section shall be fined not more than $10,000 for the first violation, and not more than $25,000 for each subsequent violation.

(2) All fish products and wildlife products [27] brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(f) [28] (1) Enforcement of the provisions of this section prohibiting the bringing or importation of fish products and wildlife products [29] into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United Stats commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this act and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder.

(B) with or without a warrant or other process, to search any vessel or other conveyance [30] subject to the jurisdiction of the

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[28] Sec. 3(b) of Public Law 96-61 (93 Stat. 408) redesignated subsecs. (d) through (g) as subsecs. (e) through (h), respectively, and added a new subsec. (d).

[29] The words "and wildlife products" were added by sec. 2 of Public Law 95-376 (92 Stat. 714).

[30] The words "or other conveyance" were added by sec. 2(5)(B) of Public Law 95-376 (92 Stat. 714).

United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all fish products brought or imported into the United States in violation of this section or the regulations issued thereunder. Fish products and wildlife products [31] so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health, Education, and Welfare.

(g) [28] The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior are each [32] authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(h) [28] As used in this section—

(1) The term "person" means any individual, partnership, corporation, or association.

(2) The term "United States" when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.

(3) The term "international fishery conservation program" means any ban, restriction, regulation, or other measure in effect [33] pursuant to a multilateral agreement which is in force with respect to the United States,[34] the purpose of which is to conserve or protect the living resources of the sea.

(4) [35] The term "fish products" means any aquatic species (including marine mammals and plants) and all products thereof exported from an offending country, whether or not taken by fishing vessels of such country, or packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof.

(5) [36] The term "international program for endangered or threatened species" means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

(6) [36] The term "wildlife products" means fish (other than those to which paragraph (4) applies) and wild animals, and parts (including eggs) thereof, taken within an offending country and all products of any such fish and wild animals, or parts thereof, whether or not such products are packed, processed, or otherwise prepared for

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[31] The words to this point in this sentence were substituted in lieu of the words "Any fish products" by sec. 2(5)(C) of Public Law 95-376 (92 Stat. 714).

[32] References to the Secretary of Commerce and the Secretary of the Interior were added by sec. 2(6) of Public Law 95-376 (92 Stat. 714).

[33] The words "in effect" were substituted in lieu of the words "in force" by sec. 2(7)(A) of Public Law 95-376 (92 Stat. 715).

[34] The words "which is in force with respect to the United States" were substituted in lieu of the words "to which the United States is a signatory party" by sec. 2(7)(B) of Public Law 95-376 (92 Stat. 715).

[35] Par. (4) was amended by sec. 8 of Public Law 100-711 (Marine Mammal Protection Act Amendments of 1988; 102 Stat. 4772). Previously, par. (4) had read:

"(4) The term 'fish products' means fish and marine mammals and all products thereof taken by fishing vessels of an offending country whether or not packed, processed, or otherwise prepared for export in such a country or within the jurisdiction thereof."

[36] Pars. (5), (6), and (7) were added by sec. 2(7)(C) of Public Law 95-376 (92 Stat. 715).

export in such country or within the jurisdiction thereof. Such term does not include any wild animal or fish if brought or imported into the United States for scientific research.

(7) [36] The term "taking" means—

(A) for purposes of subsection (a)(2)—

(i) to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

(ii) to attempt to engage in any such conduct with respect to,

animals to which an international program for endangered or threatened species applies; and

(B) for purposes of paragraph (6), any conduct described in subparagraph (A)(i), whether or not such conduct is legal under the laws of the offending country, undertaken with respect to any wild animal.

Sec. 9.[37] There is created a Fishermen's Protective Fund which shall be used by the Secretary of State [38] to reimburse owners of vessels for amounts determined and certified by him [38] under section 3. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 5(a) shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 3; except that if a transfer to the fund was made pursuant to section 5(b)(1) with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of $3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund.

Sec. 10.[39] (a) For purposes of this section—

(1) The terms "fishery," "fishery conservation zone," [3] "fishing," "fishing vessel," "Secretary," and "vessel of the United States" shall each have the same respective meaning as is given to such terms in section 3 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802).

(2) The term "fishing gear" means any equipment or appurtenance which is necessary for the carrying out of fishing operations by a fishing vessel, whether or not such equipment or appurtenance is attached to such vessel.

(3) The term "fund" means the Fishing Vessel and Gear Damage Compensation Fund established under subsection (f).

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[37] 22 U.S.C. 1979. Sec. 9 was added by sec. 5 of Public Law 92-569 (86 Stat. 1183).

[38] Sec. 302(c) of Public Law 98-364 (98 Stat. 444) amended the first sentence of sec. 9 by substituting a reference to the Secretary of State in lieu of a reference to the Secretary of the Treasury, and by inserting the phrase "determined and certified by him" in lieu of "certified to him by the Secretary of State".

[39] 22 U.S.C. 1980. Sec. 10, as added by Public Law 95-194 (91 Stat. 1413), was amended and restated by sec. 3(a) of Public Law 95-376 (92 Stat. 715). Note also sec. 3 (b) and (c) of Public Law 95-376 which provide:

"(b) The amendment made by subsection (a) shall take effect January 1, 1979.

"(c) Nothing in the amendment made by subsection (a) shall be construed as affecting in any manner or to any extent any loan made under section 10 of the Fishermen's Protective Act of 1967 (as in effect before January 1, 1979), and, for purposes of the consideration by the Secretary of Commerce of any application for a loan under such section which was filed, but not acted on, before January 1, 1979, the amendment made by subsection (a) shall not be deemed to have been enacted."

(4) [40] The term "resulting economic loss" means the gross income, as estimated by the Secretary, that a fishing vessel owner or operator who is eligible for compensation under this section for damage to, loss of, or destruction of, a fishing vessel or the fishing gear used with such vessel will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the vessel or gear, or both, are repaired or replaced and available for use.

(b) Subject to the provisions of this section, the owner or operator (hereinafter referred to as the "vessel owner") of any fishing vessel which is a vessel of the United States is eligible for monetary compensation under this section for any damage to, loss of, or destruction of such vessel, or any fishing gear used with such vessel, or both, and for any resulting economic loss [41] if the damage, loss, or destruction—

(1) in the case of such vessel—

(A) occurs when such vessel is engaged in any fishery subject to the exclusive fishery management authority of the United States under the Magnuson Fishery Conservation and Management Act of 1976, and

(B) is attributable to any vessel (or its crew or fishing gear) other than a vessel of the United States; or

(2) in the case of such fishing gear—

(A) occurs when such fishing gear is being used for fishing in any fishery subject to such exclusive management authority; and

(B) [42] is attributable to any other vessel, whether or not such vessel is a vessel of the United States.

For purposes of subparagraph (B), there shall be a rebuttable presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel.

(c) A vessel owner is not eligible for compensation under this section with respect to fishing vessel or fishing gear damage, loss, or destruction and resulting economic loss [43] unless such owner—

(1) makes application to the Secretary for compensation under this section within 90 days [44] after the day on which the damage, loss, or destruction occurred or was first noticed by the owner;

(2) pays upon making such application a reasonable administrative fee which the Secretary shall deposit into the fund;

(3) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the fishery vessel or fishing gear concerned;

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[40] Sec. 241(1) of Public Law 96-561 (94 Stat. 3301) added par. (4).

[41] Sec. 241(2)(A) of Public Law 96-561 (94 Stat. 3301) added the words "and for any resulting economic loss".

[42] Sec. 241(2)(B) of Public Law 96-561 (94 Stat. 3301) amended and restated subpar. (B). It formerly read as follows:

"(B) is attributable to (i) any other vessel, whether such vessel is a vessel of the United States, or (ii) an act of God."

[43] Sec. 241(3) of Public Law 96-561 (94 Stat. 3302) added the words ", and resulting economic loss".

[44] The period of time permitted for making an application for compensation was extended from 60 to 90 days by sec. 4(b) of Public Law 96-289 (94 Stat. 606).

(4) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the location of, the fishing gear concerned; and

(5) is in compliance with such other regulations as may be prescribed by the Secretary to carry out this section.

(d)(1) Application for compensation under this section shall be made in such form and manner, and include such documentation and other evidence relating to the cause and extent of the damage, loss or destruction, and resulting economic loss,[45] claimed, as the Secretary shall prescribe by regulation. The Secretary shall promptly, but not later than sixty days after receipt of an application, consider, and issue and initial determination with respect to, the application.

(2) [46] The amount of compensation awarded to any vessel owner under this section shall be—

(A) the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or the fishing gear concerned; and

(B) 25 percent of any resulting economic loss.

Any amount determined pursuant to subparagraph (A) or (B) shall be reduced to the extent that evidence indicates that negligence by the vessel owner or operator contributed to the cause or the extent of the damage, loss, or destruction and shall be further reduced by the amount of compensation, if any, that the vessel owner or operator has received or will receive with respect to the damage, loss, destruction, or resulting economic loss through insurance, pursuant to any other provision of law, or otherwise.

(3) The initial determination made by the Secretary under paragraph (1) with respect to any application shall—

(A) if the application is disapproved, set forth the reasons therefore; or

(B) if the application is approved, set forth the amount of compensation to which the applicant is entitled and the basis on which such amount was determined.

(4) Any vessel owner who is aggrieved by any decision of the Secretary contained in the initial determination of the Secretary regarding such owner's application may, within thirty days after the date of issue of the initial determination, petition the Secretary for a review of the decision. If petition of review is not made to the Secretary within such thirty-day period regarding the initial determination, the initial determination shall be deemed to be the final determination on the application. Before undertaking any such review, the secretary shall provide to the vessel owner opportunity to submit additional written or oral evidence relating to the deci-

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[45] Sec. 241(4)(A) of Public Law 96-561 (94 Stat. 3302) added the words ", and resulting economic loss,".

[46] Sec. 241(4)(B) of Public Law 96-561 (96 Stat. 3302) amended and restated par. (2). It formerly read as follows:

"(2) The amount of compensation awarded to any vessel owner under this section shall be—

"(A) determined on the basis of the depreciated replacement cost, or the repair cost, which-ever cost is less, of the fishing vessel or fishing gear concerned;

"(B) proportionally reduced to the extent that evidence indicates that negligence by the vessel owner contributed to the cause or extent of the damage, loss, or destruction; and

"(C) reduce by the amount of compensation, if any, which the vessel owner has received or will receive with respect to the damage, loss, or destruction through insurance, pursuant to any other provision of law, or otherwise."

sion. After review the Secretary shall issue a final determination with respect to the application.

(5) If compensation is awarded under the final determination on any application, the Secretary shall promptly pay from the fund to such owner the amount of compensation stated in the final determination. Upon the acceptance of such payment by the vessel owner, the United States shall be subrogated to all rights of the vessel owner with respect to which the payment is made.

(e) In addition to any fee imposed under section 204(b)(10) of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(10) with respect to any foreign fishing vessel for any year after 1978, the Secretary shall impose a surcharge in an amount not to exceed 20 percent of the amount of the fee imposed under such section for such year. The failure to pay any surcharge imposed under this subsection with respect to any foreign fishing vessel shall be treated by the Secretary as a failure to pay the fee for such vessel under such section 204(b)(10).

(f)(1) There is established in the Treasury of the United States the Fishing Vessel and Gear Damage Compensation Fund. The fund shall be available without fiscal year limitation as a revolving fund for the purposes of administering, and paying compensation awarded under, this section.

(2) The fund shall consist of—

(A) all sums recovered by the United States in the exercise of rights subrogated to it under subsection (d)(5);

(B) all administrative fees collected under subsection (c)(2);

(C) all surcharges collected under subsection (e);

(D) revenues received from deposits or investments made under the last sentence of this paragraph; and

(E) any revenue acquired through the issuance of obligations under paragraph (3).

Sums may be expended from the fund only to such extent and in such amounts as are provided in advance in appropriation Acts. Sums in the fund which are not currently needed for the purpose of paying such awards shall be kept on deposit or invested in obligations of, or guaranteed by the United States.

(3) Whenever the amount in the fund is not sufficient to pay compensation under this section, the Secretary may issue, in an amount not to exceed $5,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notices or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United State of comparable maturities during the month preceding the issuance of such notices or other obligations. Moneys obtained by the Secretary under this paragraph shall be deposited in the fund and redemptions of any such notices or other obligations shall be made from the fund. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The Secretary of the Treasury may sell any such notices or other obligations at such

times and prices and upon such terms and conditions as he shall determine. All purchases, redemptions, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation under this section is guilty of a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or both.

NOTE.—Public Law 92-569 (October 26, 1972) also provided:

"SEC. 6. The amendment made by this Act shall apply with respect to seizures of vessels of the United States occurring on or after the date of the enactment of this Act; except that reimbursements under section 3 of the Fishermen's Protective Act of 1967 (as in effect before such date of enactment) may be made from the fund established by the amendment made by section 5 of this Act with respect to any seizure of a vessel occurring before such date of enactment and after December 31, 1970, if no reimbursement was made before such date of enactment."

NOTE.—Sec. 240 of Public Law 96-561, effective December 22, 1980, (94 Stat. 3300; 22 U.S.C. 1980 nt.) also provided the following:

"SEC. 240. APPLICATIONS AND FILINGS FOR COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE.

"(a) IN GENERAL.—If—

"(1) any owner or operator of a fishing vessel who suffered, after September 17, 1978, and before the date of the enactment of this title, damage to, or loss or destruction of, such vessel or fishing gear used with such vessel, but did not apply for compensation therefore under section 10 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980) within the 60-day period prescribed in subsection (c)(1) of such section; or

"(2) any commercial fisherman who suffered, after September 17, 1978, and before the date of the enactment of this title, damages compensable under title IV of the Outer Continental Shelf Lands Act of 1978 (43 U.S.C. 1841 *et seq.*), but who did not timely file a claim therefor within the 60-day period prescribed in section 405(a) of such Act;

such owner or operator may make application for compensation with respect to such damages, loss or destruction under such section 10, and such commercial fisherman may file a claim for, compensation for such damages under such title IV, to the Secretary of Commerce, within the 60-day period beginning on the date of the enactment of this title.

"(b) SPECIAL PROVISIONS.—(1) Notwithstanding any other provision of law—

"(A) any application or filing timely made under subsection (a) shall be treated by the Secretary of Commerce as an application timely made under such section 10(c)(1), or as a filing timely made under such section 405(a), as the case may be, with respect to the damage, loss, or destruction claimed; and

"(B) any claim for fishing gear loss that was pending on June 1, 1980, before the United States-Union of Soviet Socialist Republic Fisheries Claims Board or the American-Spanish Fisheries Board shall be treated by the Secretary of Commerce as a timely application made, on the date of the enactment of this title, under such section 10(c)(1) for compensation for such loss."

12. Endangered Species Act of 1973, as amended

Partial text of Public Law 93-205 [S. 1983], 87 Stat. 884; 16 U.S.C. 1531-1543, approved December 28, 1973; as amended by Public Law 94-359 [S. 229], 90 Stat. 911, approved July 12, 1976; by Public Law 95-632 [S. 2899], 92 Stat. 3751, approved November 10, 1978; by Public Law 96-159 [S. 1143], 93 Stat. 1225, approved December 28, 1979; by Public Law 97-304 [H.R. 6133], 96 Stat. 1411, approved October 13, 1982; by Public Law 99-659 [S. 991], 100 Stat. 3706, approved November 14, 1986; by Public Law 100-478 [H.R. 1467], approved October 7, 1988; and by Public Law 100-653 [H.R. 4030], approved November 14, 1988

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 8A. Convention implementation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.
Sec. 17. Marine Mammal Protection Act of 1972.

FINDINGS, PURPOSES, AND POLICY

Sec. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Oceans;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and [1]

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and convention set forth in subsection (a) of this section.

(c) POLICY.—(1) [2] It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) [2] It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resources issues in concert with conservation of endangered species.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) [3] The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) [3] The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the propose of facilitating such buying and selling: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.[4]

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[1] Sec. 1013(a) of Public Law 100-478 (102 Stat. 2315) struck the period following "agreements" and added the text "; and".

[2] Sec. 9(a) of Public Law 97-304 (96 Stat. 1426) added the par. designation "(1)" and a new par. (2) to subsec. (c).

[3] Sec. 2 of Public Law 95-632 (92 Stat. 3751) redesignated pars. (1), (2), and (3) as (2), (3), and (4) respectively, and added a new par. (1).

[4] Sec. 5 of Public Law 94-359 (90 Stat. 913) added the words to this point beginning with ": *Provided, however.*".

(3) [3] The terms "conserve", "conserving," and "conservation" mean to use and the use of all methods and procedures which are necessary to being any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressure within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) [3] The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5) [5] (A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) [5] The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) [5] The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) [5] The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any

[5] Sec. 2 of Public Law 95-632 (92 Stat. 3721) redesignated pars. (4), (5), (6), and (7) as pars. (6), (8), (9), and (10), respectively, and added new pars. (5) and (7).

part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) [5] The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) [5] The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) [6] * * * [Repealed—1982]

(12) [7] The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13) [7, 8] The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) [7] The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) [7] The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also [8] means the Secretary of Agriculture.

(16) [7, 9] The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any

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[6] Par. (11), which defined the term "irresolvable conflict", was repealed by sec. 4(b) of Public Law 97-304 (96 Stat. 1420). Originally, par. (11) had been added by sec. 2 of Public Law 95-632 (92 Stat. 2752) and subsequently amended by sec. 2 of Public Law 96-159 (93 Stat. 1225).

[7] Sec. 2 of Public Law 95-632 (92 Stat. 2752) redesignated pars. (8) through (16) as pars. (13) through (21) and added new pars. (11) and (12).

[8] Sec. 1001 of Public Law 100-478 (102 Stat. 2306) restated par. (13) and added the word "also" before "means the Secretary of Agriculture" in par. (15). Par. (13) previously read:

"The term 'person' means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government."

[9] Par. (16) as redesignated, was amended by sec. 2(5) of Public Law 95-632 (92 Stat. 3752).

species of vertebrate fish or wildlife which interbreeds when mature.

(17) [7] The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) [7] The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(19) [7] The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.

(20) [7] The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) [7] The term "United States" when used in a geographical context, includes all States.

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INTERNATIONAL COOPERATION

Sec. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secertary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants [10] including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

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[10] The reference to plants was added by sec. 5 of Public Law 96-159 (93 Stat. 1228).

(3) foreign persons who directly or indirectly take fish or wildlife or plants [10] in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants [10] and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants; [10] and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) [11] * * * [Repealed—1979]

CONVENTION IMPLEMENTATION

Sec. 8A.[12] (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c)(1) [13] SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) [13] The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) [14] RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States votes against including any species in

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[11] Subsec. (e), which had concerned implementation of the Convention, was repealed by sec. 5(4) of Public Law 96-159 (93 Stat. 1228). This subject is now covered by sec. 8A of this Act.

[12] Sec. 6 of Public Law 96-159 (93 Stat. 1228) added sec. 8A.

[13] Sec 5(1) of Public Law 97-304 (96 Stat. 1421) added the par. designation "(1)" and a new par. (2) in subsec. (c), effective Jan. 1, 1981.

[14] Sec. 5(2) of Public Law 97-304 (96 Stat. 1421) amended and restated subsec. (d). Previously, subsec. (d) had established an International Convention Advisory Commission.

Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) [15] WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—(1) The Secretary of the Interior (hereinafter in this subsection referred to as the "Secretary"), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the "Western Convention"). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State, shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

PROHIBITED ACTS

Sec. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or

[15] Sec. 5(3) of Public Law 97-304 (96 Stat. 1421) amended and restated subsec. (e).

wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in section 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) [16] remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(C) [16] deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) [16] sell or offer for sale in interstate or foreign commerce any such species; or

(E) [16] violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) [17, 18] SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided,* That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to

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[16] Sec. 9(b)(1) of Public Law 97-304 (96 Stat. 1426) redesignated existing subpar. (B), (C), and (D), as (C), (D), and (E), respectively, and added a new subpar. (B). Subpar. (B) was subsequently amended by sec. 1006 of Public Law 100-478 (102 Stat. 2308) which added the text following "Federal jurisdiction;" to the end of the subpar.

[17] Sec. 9(b)(2) of Public Law 97-304 (96 Stat. 1426) amended and restated par. (1).

any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttal presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2) [18] (A) The provisions of subsection (a)(1) shall not apply to—[19]

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) [20] IMPORTS AND EXPORTS.—

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[18] Sec. 4 of Public Law 95-632 (92 Stat. 3760) inserted the paragraph designation "(1)" and added a new par. (2).

[19] This phrase was substituted in lieu of the phrase "This section shall not apply to" by sec. 9(b)(3) of Public Law 97-304 (96 Stat. 1427).

[20] Subsec. (d) was amended by sec. 2301 of Public Law 100-478 (102 Stat. 2321). Previously, subsec. (d) read as follows:

"(d) IMPORTS AND EXPORTS.—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdic-

Continued

(1) IN GENERAL.—It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; [21] or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS.—Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory.

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OR AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of

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tion of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

"(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

"(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

"(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

"(C) file such reports as the Secretary may require.

"(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection."

[21] The reference to plants was added by sec. 905 of Public Law 100-653 (102 Stat. 3835).

the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purpose of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose, of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

Sec. 10. (a)[22] PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purposes of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

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[22] Sec. 6(1) of Public Law 97-304 (96 Stat. 1422) amended and restated subsec. (a). It formerly read as follows:

"(a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species."

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish, or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section.[23] Each notice shall invite the submission from interested parties, within thirty days after the date of notice, of[24] written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.[25] Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

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[23] Sec. 3(1) of Public Law 94-359 (90 Stat. 912) substituted the word "section" in lieu of "subsection".

[24] Sec. 1013(b) of Public Law 100-478 (102 Stat. 2315) struck out "notice," in this second sentence and inserted "notice, of".

[25] Sec. 3(2) of Public Law 94-359 (90 Stat. 912) added the words to this point beginning with "; except that such thirty day period".

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplish in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing,[26] beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)[27] (1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

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[26] Sec. 1013(c) of Public Law 100-478 substituted "lacing" in lieu of "lacking" which previously appeared at this point.

[27] Subsec. (f) was added by sec. 2 of Public Law 94-359 (90 Stat. 911).

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial [28] etching or engraving of designs upon, or the substantial [28] carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.[29]

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, and pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); [30] and

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[28] Sec. 6(3) of Public Law 97-304 (96 Stat. 1423) added the word "substantial".

[29] This sentence was added by sec. 6(3) of Public Law 97-304 (96 Stat. 1423).

[30] The phrase "unless such exemption is renewed under paragraph (8)" was added by sec. 7(1) of Public Law 96-159 (93 Stat. 1230).

(D) and term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect and such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions with may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8) [31] (A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous [32] certificate shall remain in effect during the period of the renewal.

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[31] Sec. 7(2) of Public Law 96-159 (93 Stat. 1230) added par. (8). Par. (8)(A) was subsequently restated by sec. 1011 of Public Law 100-478 (102 Stat. 2314). Previously, par. (8)(A) read as follows:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph."

[32] Sec. 1011(b) of Public Law 100-478 (102 Stat. 2314) inserted "previous" in lieu of "original" at this point.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) [33] No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.[34]

(g) [35] In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) [36] CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article [37] which—

(A) [38] is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraphs (1) (A), (B), and (C).

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[33] Subpar. (D) was added by sec. 1011(c) of Public Law 100-478 (102 Stat. 2314).

[34] A subpar. (9), previously added by sec. 6(3)(B) of Public Law 97-304 (96 Stat. 1423), was struck out by sec. 1011(d) of Public Law 100-478 (102 Stat. 2314). That subpar. had required the Secretary to conduct a review of the effectiveness of the regulations prescribed pursuant to sec. 10(f)(5). In addition, subpar. (9) required that:

"The Secretary shall submit a report of such review to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on the Environment and Public Works of the Senate and make it available to the general public. Based on such review, the Secretary shall, on or before October 1, 1983, propose and adopt such revisions to such regulations as he deems necessary and appropriate to carry out this paragraph. Upon publication of such revised regulations, the Secretary may renew for a further period of not to exceed three years any certificate of exemption previously renewed under paragraph (8) of this subsection, subject to such new terms and conditions as are necessary and appropriate under the revised regulations; except that any certificate of exemption that would, but for this clause, expire on or after the date of enactment of this paragraph and before the date of the adoption of such regulations may be extended until such time after the date of adoption as may be necessary for purposes of applying such regulations to the certificate. Notwithstanding the foregoing, however, no person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless such person has been issued a valid certificate of exemption by the Secretary under this subsection and unless such product or the raw material for such product was held by such person on the date of the enactment of this paragraph."

[35] Subsec. (g) was added by sec. 2 of Public Law 94-359 (90 Stat. 912).

[36] Subsec. (h) was added by sec. 5 of Public Law 95-632 (92 Stat. 3760).

[37] The parenthetical phrase "(other than scrimshaw)", which previously appeared at this point, was struck out by sec. 6(4)(A)(i) of Public Law 97-304 (96 Stat. 1424), effective Jan. 1, 1981.

[38] Sec. 6(4)(A)(ii) of Public Law 97-304 (96 Stat. 1424) amended and restated subpar. (A) effective Jan. 1, 1981. It formerly read: "(A) was made before 1830;".

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraphs (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) [39] NONCOMMERCIAL TRANSSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

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[39] Subsec. (i), as added sec. 5 of Public Law 95–632 (92 Stat. 3760), was amended and restated by sec. 6(5) of Public Law 97–304 (96 Stat. 1424).

(j)[40] EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

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ENDANGERED PLANTS

Sec. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or the threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

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[40] Sec. 6(6) of Public Law 97-304 (96 Stat. 1424) added subsec. (j).

13. Marine Mammal Protection Act of 1972, as amended

Partial text of Public Law 92-522 [H.R. 10420], 86 Stat. 1027, approved October 21, 1972, as amended by Public Law 93-205 [S. 1983], 87 Stat. 884, approved December 28, 1973; by Public Law 95-136 [S. 1522], 91 Stat. 1167, approved October 18, 1977; by Public Law 95-316 [H.R. 10730], 92 Stat. 380, approved July 10, 1978; by Public Law 97-58 [H.R. 40841], 95 Stat. 979, approved October 9, 1981; by Public Law 97-389 [H.R. 3942], 96 Stat. 1949 at 1951, approved December 29, 1982; by Public Law 98-364 [H.R. 4997], 98 Stat. 440, approved July 17, 1984; by Public Law 99-659 [S. 991], 100 Stat. 3706, approved November 14, 1986; and by Public Law 100-711 [Marine Mammal Protection Act Amendments of 1988; H.R. 4189], 102 Stat. 4755, approved November 23, 1988

AN ACT To protect marine mammals; to establish a Marine Mammal Commission; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

* * * * * * *

FINDINGS AND DECLARATION OF POLICY [1]

Sec. 2.[2] The Congress finds that--

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has

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[1] Sec. 602 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 985) contains the following sense of the Congress expressing its concern over the continuing destruction of marine mammals:

"Sec. 602. It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries—

"(1) to join in international discussions with other such countries in order to advance general understanding of cetacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

"(2) to participate in an exchange of information with the National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of—

"(A) the impact of cetaceans on ecologically related human foodstuffs, and

"(B) alternative methods of dealing with cetacean problems as they occur;

"(3) to cooperate in establishing an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

"(4) to adopt comprehensive marine mammal protection legislation."

[2] 16 U.S.C. 1361.

already diminished below that population. In particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the [3] carrying capacity of the habitat.

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

Sec. 101.[4] (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) [5] Consistent with the provisions of section 104, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock if—

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[3] The word "optimum" which previously appeared at this point, was struck out by sec. 1(b)(1) of Public Law 97-58 (95 Stat. 979).

[4] 16 U.S.C. 1371.

[5] Par. (1) was amended by sec. 5(c) of Public Law 100-711 (102 Stat. 4679). Par. (1) previously read: "(1) Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—".

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made,

is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 2 of this Act. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortally and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.[6] The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.

For purposes of applying the preceding sentence, the Secretary—

(A) Shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States; [7]

(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average

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[6] Par. (2) was amended and restated up to this point by sec. 101(1)(A) of Public Law 97-58 (95 Stat. 979).

[7] Sec. 4(a) of Public Law 100-711 (102 Stat. 4765) deleted the word "and" which previously appeared at this point.

rate of incidental taking of marine mammals by United States vessels in the course of such harvesting,[8]

except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless—

(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

(III) the total number of eastern spinner dolphin (Stenella longirostris) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 percent of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dolphin (Stenella attenuata) incidentally taken by such vessels in such seasons does not exceed 2 percent of the total number of all marine mammals incidentally taken by such vessels in such year;

(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessel during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 104(h)(3) of this title; [9]

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[8] Sec. 101 of Public Law 98-364 (98 Stat. 440) amended and restated the last sentence of par. (2). Previously, the sentence had contained the text of subpar. (A). Sec. 4(a)(2) of Public Law 100-711 (102 Stat. 4765) substituted a comma in lieu of the period previously appearing at this point.

[9] The text to this point beginning with "except that the Secretary shall not find" was added by sec. 4(a)(2) of Public Law 100-711 (102 Stat. 4765).

(C) [10] shall require the government of any intermediary nation from which yellowfin tuna or tuna products will be exported to the United States to certify and provide reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States of such tuna and tuna products is banned under this section within sixty days following the effective date of such ban on importation to the United States; and

(D) [10] shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations, must be assured that the taking of such marine mammals is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes or enhancing the survival or recovery of a species or stock [11] as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which [12] has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4) [13] (A) During any period of five consecutive years, the Secretary shall allow the incidental, but not the intentional,

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[10] Subpars. (C) and (D) were added by sec. 4(a)(3) of Public Law 100-711 (102 Stat. 4766).

[11] Sec. 5(e)(1) of Public Law 100-711 (102 Stat. 4771) inserted the words "or enhancing the survival or recovery of a species or stock".

[12] The phrase "is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or" was deleted by sec. 101(1)(B) of Public Law 97-58 (95 Stat. 980).

[13] Par. (4) was added by sec. 101(1)(C) of Public Law 97-58 (95 Stat. 980).

taking, by citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock [14] if the Secretary, after notice and opportunity for public comment—

(i) finds that the total of such taking during such five-year period will have a negligible impact on such species or stock; and

(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment, that—

(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

(ii) the policies, purposes and goals of this Act would be better served through the application of this title without regard to this subsection.

Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock that [14] if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and [15] will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) [16] or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949 (16 U.S.C. 916 *et seq.*), pursuant to section 112(c); and

(ii) prescribes regulations setting forth—

(I) permissible methods of taking pursuant to such activity, and other means of effecting the last practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries,

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[14] The words "that is not depleted" which previously followed this point were deleted by sec. 411 of Public Law 99-659 (100 Stat. 3741).

[15] The words beginning with "will" and ending with "impact" were added by sec. 411 of Public Law 99-659, (100 Stat. 3741) and replaced the words "its habitat, and."

[16] The words from this point through "pursuant to section 112(c)" were added by sec. 411 of Public Law 99-659 (100 Stat. 3741).

mating grounds, and areas of similar significance; [17] and on the availability of such species or stock for subsistance uses; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

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PROHIBITIONS

Sec. 102.[18] (a) Except as provided in sections 101, 103, 104, 109,[19] 111, 113, and 114 [20] of this title, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; and

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[17] The words from this point through "subsistence uses" were added by sec. 411 of Public Law 99-659.

[18] 16 U.S.C. 1372.

[19] The reference to sec. 109 was added by sec. 3(a)(1)(A) of Public Law 97-58 (95 Stat. 981).

[20] The reference to sec. 114 was added by sec. 2(b) of Public Law 100-711 (102 Stat. 4763).

(3) [21] for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4) [21] for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; and

(5) [21] for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock,[22] issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; [23] or

(4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.[24]

(c) It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation in to the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Subsection (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States

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[21] Sec. 3(a)(1) of Public Law 97-58 (95 Stat. 981) redesignated par. (4) as par. (5), deleted existing par. (3), and added new pars. (3) and (4).

[22] Sec. 5(e)(2) of Public Law 100-711 (102 Stat. 4771) inserted the words "research, or enhancing the survival or recovery of a species or stock," in lieu of "research".

[23] The phrase "or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973" was struck out by sec. 3(a)(2) of Public Law 97-58 (95 Stat. 981).

[24] This sentence was added by sec. 5(b) of Public Law 100-711 (102 Stat. 4769).

before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted,[25] or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) This Act shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) [26] It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

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INTERNATIONAL PROGRAM

Sec. 108.[27] (a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) [28] initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums; and

(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve

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[25] The words "or endangered" which previously appeared at this point, were struck out by sec. 3(a)(3) of Public Law 97-58 (95 Stat. 981).

[26] Subsec. (f) was added by sec. 4 of Public Law 95-136 (91 Stat. 1167).

[27] 16 U.S.C. 1378.

[28] Par. (2) was amended by sec. 4(b) of Public Law 100-711 (102 Stat. 4766) which moved the text formerly in par. (2) into subpar. (A), and added a new subpar. (B).

the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act a full report on the results of his efforts under this section.

(b)(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957,[29] as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this

[29] 8 UST 2283; TIAS 3948. See boxnote on page 2.

Act, or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c) [30] The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B), as well as any proposals for further action to achieve the purposes of that subsection, in the report required under section 103(f) of this title.

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TITLE II—MARINE MAMMAL COMMISSION

ESTABLISHMENT OF COMMISSION

Sec. 201.[31] (a) There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b)(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate.[32] The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Direc-

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[30] Subsec. (c) was added by sec. 4(c) of Public Law 100-711 (102 Stat. 4767).

[31] 16 U.S.C. 1401.

[32] Sec. 202 of Public Law 97-389 (96 Stat. 1961) amended and restated this sentence. Before Sept. 1, 1982, the appointments made by the President to the Commission were subject to the advice and consent of the Senate.

tor of the National Science Foundation and the Chairman of the National Academy of Sciences.[33] No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of this term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Executive Director Shall have such duties as the Chairman may assign.

DUTIES OF COMMISSION

Sec 202.[34] (a) The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949,[35] the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966; [36]

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[33] Sec. 103(a) of Public Law 98–364 (98 Stat. 441) struck out the second sentence in par. (1) and inserted in lieu thereof the previous two sentences. The deleted sentence read as follows: "The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals."

[34] 16 U.S.C. 1402.

[35] For text, see page 153.

[36] 80 Stat 1091; 16 U.S.C. 1151 note.

(2) conduct a continuing review of the condition of the stocks of marine mammals of methods for their protection and conservation, or humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research, public display, or enhancing the survival or recovery of a species or stock; [37]

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals.

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 204, before submission to Congress, to the Secretary for comment.[38]

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

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[37] Sec. 5(e)(4) of Public Law 100-711 (102 Stat. 4771) inserted the words ", public display, or enhancing the survival or recovery of a species or stock".

[38] The reference to the report required under sec. 204 was inserted in lieu of a general reference to reports and recommendations of the Commission by sec. 6(1) of Public Law 97-58 (95 Stat. 987).

COMMISSION REPORTS

Sec. 204.[39] The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.

* * * * * * *

AUTHORIZATION OF APPROPRIATIONS [40]

Sec. 207.[41] There are authorized to be appropriated for the fiscal year in which this title is enacted [42] and for the next five fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed $1,000,000, the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed $2,000,000, the sum appropriated for the fiscal year ending September 30, 1979, shall not exceed $1,000,000, the sum appropriated for the fiscal year ending September 30, 1980, shall not exceed $1,000,000, and the sum appropriated for the fiscal year ending September 30, 1981, shall not exceed $1,000,000.[43]

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[39] 16 U.S.C. 1404.

[40] See boxnote following this sec. for current authorizations for carrying out the purposes of this act.

[41] Sec. 207 was amended and restated by sec. 3 of Public Law 95–136 (91 Stat. 1167).

[42] Fiscal year 1978.

[43] References to the specific amounts to be appropriated in fiscal years 1979, 1980, and 1981 were added by sec. 4 of Public Law 95–316 (92 Stat. 381).

NOTE.—Sec. 7 of Public Law 97-58 (95 Stat. 987) (16 U.S.C. 1384 and 1407), as amended, provides the following authorizations for carrying out the functions of this Act:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"(a) DEPARTMENT OF COMMERCE.—There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I (other than section 104(h)(3)) of the Marine Mammal Protection Act of 1972, $7,223,000 for fiscal year 1982, $8,000,000 for fiscal year 1983, and $8,800,000 for each of fiscal years 1984, 1985, 1986, 1987, and 1988. There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under such title (other than section 114(e)(8)), $12,250,000 for fiscal year 1989, $12,740,000 for fiscal year 1990, $13,250,000, for fiscal year 1991, $13,780,000 for fiscal year 1992, and $14,331,000 for fiscal year 1993.

"(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, $1,600,000 for fiscal year 1982, $1,760,000 for fiscal year 1983, $2,000,000 for fiscal year 1984, $2,500,000 for fiscal year 1985, $3,000,000 for each of fiscal years 1986, 1987, 1988, and 1989, $3,120,000 for fiscal year 1990, $3,240,000, for fiscal year 1991, $3,370,000 for fiscal year 1992, and $3,500,000 for fiscal year 1993.

"(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, $672,000 for fiscal year 1982, $1,000,000 for fiscal year 1983, $1,100,000 for each of fiscal years 1984, 1985, 1986, 1987, 1988, and 1989, $1,140,000 for fiscal year 1990, $1,190,000, for fiscal year 1991, $1,230,000 for fiscal year 1992, and $1,280,000 for fiscal year 1993."

14. Antarctic Marine Living Resources Convention Act of 1984

Title III of Public Law 98-623 [H.R. 6342], 98 Stat. 3394 at 3398, approved November 8, 1984

AN ACT To approve governing international fishery agreements with Iceland and the EEC; to establish national standards for artificial reefs; to implement the Convention on the Conservation of Antarctic Marine Living Resources; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

TITLE III—ANTARCTIC MARINE LIVING RESOURCES CONVENTION

SEC. 301.[1] SHORT TITLE.

This title may be cited as the "Antarctic Marine Living Resources Convention Act of 1984".

SEC. 302.[2] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Convention of the Conservation of Antarctic Marine Living Resources establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources;

(2) the Convention incorporates an innovative ecosystem approach to the management of Antarctic marine living resources, including standards designed to ensure the health of the individual populations and species and to maintain the health of the Antarctic marine ecosystem as a whole;

(3) the Convention serves important United States environmental and resource management interests;

(4) the Convention represents an important contribution to United States long term legal and political objectives of maintenance of Antarctica as an area of peaceful international cooperation;

(5) United States basic and directed research programs concerning the marine living resources of the Antarctic are essential to achieve the United States goal of effective implementation of the objectives of the Convention; and

(6) the United States has important security, economic, and environmental interest in developing and maintaining a fleet of ice-breaking vessels capable of operating effectively in the heavy ice regions of Antarctica.

(b) PURPOSE.—The purpose of this title is to provide the legislative authority necessary to implement, with respect to the

[1] 16 U.S.C. 2431 note.
[2] 16 U.S.C 2431.

United States, the Convention on the Conservation of Antarctic Marine Living Resources.

SEC. 303.[3] DEFINITIONS.

For purposes of this title—

(1) ANTARCTIC CONVERGENCE.—The term "Antarctic Convergence" means a line joining the following points along the parallels of latitude and meridians of longitude: 50 degrees south, 0 degrees; 50 degrees south, 30 degrees east; 45 degrees south, 30 degrees east; 45 degrees south, 80 degrees east; 55 degrees south, 80 degrees east; 55 degrees south, 150 degrees east; 60 degrees south, 150 degrees east; 60 degrees south; 50 degrees west; 50 degrees south, 50 degrees west; and 50 degrees south, 0 degrees.

(2) ANTARCTIC MARINE LIVING RESOURCES.—The term "Antarctic marine living resources" means the population of finfish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

(3) COMMISSION.—The term "Commission" means the Commission for the Conservation of Antarctic Marine Living Resources established pursuant to article VII of the Convention.

(4) CONVENTION.—The term "Convention" means the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980, and entered into forces with respect to the United States on April 7, 1982.

(5) HARVESTING OR OTHER ASSOCIATED ACTIVITIES.—The terms "harvesting" and "harvesting or other associated activities" mean—

(A) the harassing, molesting, harming, pursuing, hunting, shooting, wounding, killing, trapping, or capturing of Antarctic marine living resources;

(B) attempting to engage in any activity set forth in subparagraph (A);

(C) any other activity which can reasonably be expected to result in any activity described in subparagraph (A); and

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

(6) HARVEST.—The term "harvest" means to engage in harvesting or other associated activities.

(7) IMPORT.—The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing constitutes an importation within the meaning of the customs laws of the United States.

(8) PERSON.—The term "person" means an individual, partnership, corporation, trust, association, and any other entity subject to the jurisdiction of the United States.

(9) SCIENTIFIC COMMITTEE.—The term "Scientific Committee" means the Scientific Committee for the Conservation of Ant-

[3] 16 U.S.C. 2432.

arctic Marine Living Resources established pursuant to article IV of the Convention.

(10) VESSEL OF THE UNITED STATES.—The term "vessel of the United States" means—

(A) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title:

(B) a vessel owned in whole or in part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation created under the laws of the United States or any state, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas.

(11) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—The term "vessel subject to the jurisdiction of the United States" includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the 1958 Convention on the High Seas.

SEC. 304.[4] REPRESENTATIVES

(a) REPRESENTATIVE TO THE COMMISSION.—The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, shall appoint an officer or employee of the United States as the United States representative to the Commission.

(b) REPRESENTATIVE TO THE SCIENTIFIC COMMITTEE.—The Secretary of Commerce and the Director of the National Science Foundation, with the concurrence of the Secretary of State, shall designate the United States representative to the Scientific Committee.

(c) COMPENSATION.—The United States representatives to the Commission and the Scientific Committee shall receive no additional compensation by reason of their services as such representatives.

SEC. 305.[5] CONSERVATION MEASURE; SYSTEM OF OBSERVATION AND INSPECTION.

(a) CONSERVATION MEASURES.—The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, is authorized—

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[4] 16 U.S.C. 2433.
[5] 16 U.S.C. 2434.

(A) to decide on behalf of the United States whether the United States is unable to accept or can no longer accept a conservation measure adopted by Commission pursuant to Article IX of the Convention, and

(B) to notify the Commission of any such decision in accordance with Article IX of the Convention.

(2) The Secretary of State shall—

(A) publish in the Federal Register, if practicable, timely notice of each proposed decision under paragraph (1) and invite written public comment regarding it; and

(B) publish in the Federal Register notice of each notification made to the Commission under paragraph (1).

(b) SYSTEM OF OBSERVATION AND INSPECTION.—The Secretary of State, with the concurrence of the Secretary of Commerce, the Director of the National Science Foundation and the Secretary of the department in which the Coast Guard is operating, is authorized to agree on behalf of the United States to the establishment of a system of observation and inspection, and to interim arrangements pending establishment of such a system, pursuant to Article XXIV of the Convention.

(c) COMMUNICATIONS FROM THE COMMISSION.—The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, and other communications from the Commission and to take appropriate action on them, either directly or by reference to the appropriate authority.

SEC. 306.[6] UNLAWFUL ACTIVITIES.

It is unlawful for any person—

(1) to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States pursuant to Article IX of the Convention;

(2) to violate any regulation promulgated under this title;

(3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource (or part or product thereof) which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States pursuant to Article IX of the Convention or in violation of any regulation promulgated under this title, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource (or part or product thereof);

(4) to refuse to permit any authorized officer or employee of the United States to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this title, or any regulations promulgated under this title;

(5) to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in

[6] 16 U.S.C. 2435.

the conduct of any search or inspection described in paragraph (4);

(6) to resist a lawful arrest or detention for any act prohibited by this section; or

(7) to interfere with, delay, or prevent by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section.

SEC. 307.[7] REGULATIONS.

The Secretary of Commerce, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States, shall promulgate such regulations as are necessary and appropriate to implement the provisions of this title.

SEC. 308.[8] CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTIES.—(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with subsection (b), to have committed any act prohibited by section 306 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed $10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this subsection. The amount of any civil penalty shall be assessed by the Secretary of Commerce by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the person committing the violation, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require, to the extent that such information is reasonably available to the Secretary.

(2) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section, until such time as the matter is referred to the Attorney General under subsection (c) of this section.

(b) HEARINGS.—Hearings for the assessment of civilian penalties under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code. For the purposes of conducting any such hearing, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or

[7] 16 U.S.C. 2436.
[8] 16 U.S.C. 2437.

transacts business, upon application by the Attorney General of the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States, who shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The court shall set aside the findings and order of the Secretary if the findings and order are found to be unsupported by substantial evidence, as provided in section 706(2)(E) of title 5, United States Code.

(d) RECOVERY OF CIVIL PENALTIES.—The Attorney General of the United States may seek to recover in any appropriate district court of the United States (1) any civil penalty imposed under this section that has become a final and unappealable order and has been referred to the Attorney General by the Secretary of Commerce or (2) any final judgment rendered under this section in favor of the United States by an appropriate court.

(e) PENALTIES UNDER OTHER LAWS.—The assessment of a civil penalty under subsection (a) for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

SEC. 309.[9] CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if that person commits any act prohibited by paragraph (4), (5), (6), or (7) of section 306.

(b) PUNISHMENT.—Any offense described in subsection (a) is punishable by a fine of $50,000 or imprisonment for not more than ten years, or both.

(c) OFFENSES UNDER OTHER LAWS.—A conviction under subsection (a) for any act shall not be deemed to preclude a conviction for such act under any other law.

SEC. 310.[10] ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this title shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other department or agency of the United States in the performance of such duties.

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[9] 16 U.S.C. 2348.
[10] 16 U.S.C. 2349.

(d) POWERS OF AUTHORIZED OFFICERS AND EMPLOYEES.—Any officer or employee of the United States who is authorized (by the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, or the head of any department or agency of the United States which has entered into an agreement with either Secretary under subsection (a)) to enforce the provisions of this title and of any regulation promulgated under this title may, in enforcing such provisions—

(1) secure, execute, and serve and order, warrant, subpoena, or other process, which is issued under the authority of the United States;

(2) search without warrant any person, place, vehicle or aircraft subject to the jurisdiction of the United States where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 306;

(3) with or without a warrant board and search or inspect any vessel of the United States or vessel subject to the jurisdiction of the United States;

(4) seize without warrant—

(A) any evidentiary item where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 306;

(B) any Antarctic marine living resources (or part or product thereof) with respect to which such an act is committed,

(C) any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), any vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), and any vehicle, aircraft, or other means of transportation subject to the jurisdiction of the United States used in connection with such an act, and

(D) any guns, traps, nets, or equipment used in connection with such an act;

(5) offer and pay rewards for services or information which may lead to the apprehension of persons violating such provisions;

(6) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

(7) in coordination with the Secretary of the Treasury, detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States;

(8) make an arrest with or without a warrant with respect to any act prohibited by paragraph (4), (5), (6), or (7) of section 306 if such officer or employee has reasonable grounds to believe that the person to be arrested is committing such act in his or her presence or view or has committed such act;

(9) exercise enforcement powers conferred on such officer or employee under a system of observation and inspection, or interim arrangements pending the establishment of such system,

which the Secretary of State has agreed to on behalf of the United States pursuant to section 305(b); and

(10) exercise any other authority which such officer or employee is permitted by law to exercise.

(c) SEIZURE.—Subject to the succeeding provision of this subsection, any property or item seized pursuant to subsection (b) shall be held by any officer or employee of the United States, who is authorized by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, pending the disposition of civil or criminal proceedings concerning the violation relating to the property or item, or the institution of an action in rem for the forfeiture of such property or item. Such authorized officer or employee may, upon the order of a court of competent jurisdiction, either release such seized property or item to the world or destroy such property or item, when the cost of maintenance of the property or item pending the disposition of the case is greater than the legitimate market value of the property or item. Such authorized officer or employee and all officers or employees acting by or under his or her direction shall be indemnified from any penalties or actions for damages for so releasing or destroying such property or item. Such authorized officer or employee may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

(d) FORFEITURE.—(1) Any Antarctic marine living resources (or part or product thereof) with respect to which an act prohibited by section 306 is committed, any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), or vessel, vehicle, or aircraft or other means of transportation subject to the jurisdiction of the United States, which is used in connection with an act prohibited by section 306, and all guns, traps, nets, and other equipment used in connection with such act, shall be subject to forfeiture to the United States.

(2) Upon the forfeiture to the United States of any property or item described in paragraph (1), or upon the abandonment or waiver of any claim to any such property or item, it shall be disposed by the Secretary of Commerce, or the Secretary of the department in which the Coast Guard is operating, as the case may be, in such a manner, consistent with the purposes of this title, as may be prescribed by regulations.

(e) APPLICATION OF CUSTOMS LAWS.—All provisions of law relating to the seizure, forfeiture, and condemnation of property (including vessels) for violation of the customs laws, the disposition of such property of the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, and the compromise of claims, under the provisions of this title, insofar as such provisions of law are applicable and not inconsistent with the provisions of this title; except that all powers, rights, and duties conferred or imposed by the customs law upon any officer or employee of the Customs Service may, for the purposes of this title, also be exercised or performed by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, or

by such officers or employees of the United States as each Secretary may designate.

SEC. 311.[11] JURISDICTION OF COURTS.

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title or of any regulation promulgated under this title.

SEC. 312.[12] FEDERAL AGENCY COOPERATION.

(a) RESPONSIBILITIES.—(1) For the purpose of carrying out the policies and objectives of the Convention or to implement any decision of the Commission—

(A) the Director of the National Science Foundation, in consultation with the Secretary of State and the heads of other appropriate departments and agencies of the United States, shall continue to support basic research investigations of the Antarctic marine ecosystem as a part of the United States Antarctic Program;

(B) the Secretary of Commerce, in consultation with the Director of the National Science Foundation, the Secretary of State and the heads of other appropriate Federal agencies, shall design and conduct the program of directed scientific research as set forth in paragraph 2 supplemental to and coordinated with the United States Antarctic Program; and

(C) the Secretary of Commerce and the Director of the National Science Foundation, in consultation with the Secretary of State, may furnish facilities and personnel to the Commission in order to assist the Commission in carrying out its functions.

(2)(A) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the National Science Foundation, and other appropriate Federal officials, shall prepare a plan, which shall be updated annually, for conducting the directed research program required under paragraph (1)(B) for each period of three consecutive fiscal years occurring during the period beginning on October 1, 1985, and ending on September 30, 1991. The Plan shall—

(i) describe priority directed research needs for the implementation of the Convention;

(ii) identify which of those needs are to be fulfilled by the United States; and

(iii) specify the design of the research referred to in paragraph (1)(B) and the funds, personnel, and facilities required for the research, including, in particular, the need for and cost of enhanced ship capacity.

(B) In preparing the plan referred to in subparagraph (A), the Secretary of Commerce shall take into account, in addition to any other matters the Secretary considers appropriate, the possibilities of securing productive results, the minimization of duplication, and the methods for monitoring and evaluating a project.

(C) The Secretary of Commerce shall submit to the Congress each year the plan required under subparagraph (A). That part of the

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[11] 16 U.S.C. 2440.
[12] 16 U.S.C. 2441.

plan covering fiscal years 1986 through 1988 shall be submitted not later than October 1, 1985. That part of the plan covering each 3-fiscal-year period thereafter shall be submitted not later than the February 1 occurring before the beginning of the first fiscal year covered by that part of the plan.

(b) CONSULTATION WITH OTHER AGENCIES.—In carrying out their functions under this section, the Secretary of State, the Secretary of Commerce, and the Director of the National Science Foundation shall consult, as appropriate, with the Marine Mammal Commission and with other departments and agencies of the United States.

(c) ICEBREAKING.—The Department of Transportation shall facilitate planning for the design, procurement, maintenance, deployment, and operation of icebreakers needed to provide a platform for Antarctic research. All funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, shall be allocated to the United States Coast Guard.

SEC. 313.[13] RELATIONSHIP TO EXISTING TREATIES AND STATUTES.

(a) IN GENERAL. Nothing in this Act shall be construed as contravening or superseding (1) the provisions of any international treaty, convention, or agreement, if such treaty, convention or agreement is in force with respect to the United States on the date of the enactment of this title, or (2) the provisions of any statute which implements any such treaty, convention, or agreement. Nothing in this title shall be construed as contravening or superseding the provisions of any statute enacted before the date of the enactment of this title which may otherwise apply to Antarctic marine living resources.

(b) APPLICATION OF MORE RESTRICTIVE PROVISIONS.—Nothing in this section shall be construed to prevent the application of provisions of the Convention, conservation measures adopted by the Commission pursuant to article IX of the Convention, or regulations promulgated under this title, which are more restrictive than the provisions of, measures adopted under, or regulations promulgated under, the treaties or statutes described in subsection (a).

SEC. 314.[14] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for carrying out the provisions of this title, including, but not limited to—

(1) necessary travel expenses of the United States representatives referred to in section 304, alternate United States representatives, and authorized advisers and experts, in accordance with sections 5701 through 5708, 5731, and 5733 of title 5 United States Code, and the regulations issued under those sections;

(2) The United States contribution to the budget of the Commission as provided in article XIX of the Convention; and

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[13] 16 U.S.C. 2442.
[14] 16 U.S.C. 2443.

(3) the directed research program and the furnishing of facilities and personnel to the Commission referred to in section 312.

SEC. 315.[15] SEVERABILITY.

If any provision of this title or the application of this title to any person or circumstance is held invalid, neither the remainder of this title nor the application of that provision to other persons or circumstances shall be affected thereby.

[15] 16 U.S.C. 2444.

L. ENERGY, NATURAL RESOURCES, AND ENVIRONMENT

CONTENTS

	Page
1. Atomic Energy Act and Related Materials	243
a. Atomic Energy Act of 1954, as amended (Public Law 83-703) (partial text)	243
b. EURATOM Cooperation Act of 1958, as amended (Public Law 85-846)	300
c. EURATOM Resolution (S. Con. Res. 116, 85th Congress)	304
d. Nuclear Cooperation with EURATOM (Executive Order 12629)	305
e. International Atomic Energy Agency Participation Act of 1957, as amended (Public Law 85-177) (partial text)	306
f. Executive Orders Concerning International Atomic Energy Cooperation	310
(1) Authorization for the Communication of Restricted Data by the Department of State (Executive Order 11057)	310
(2) Authorization for the Communication of Restricted Data by the Central Intelligence Agency (Executive Order 10899)	311
(3) Providing for the Carrying Out of Certain Provisions of the Atomic Energy Act of 1954, as Amended, Relating to International Cooperation (Executive Order 10841, as amended)	312
2. Nuclear Non-Proliferation Act of 1978 and Related Materials	314
a. Nuclear Non-Proliferation Act of 1978 (Public Law 95-242) (partial text)	314
b. Functions Relating to Nuclear Non-Proliferation (Executive Order 12058)	330
c. Export of Nuclear Material:	
(1) U.S. Exports of Low-Enriched Uranium Fuel (Public Law 96-280)	332
(2) Export of Special Nuclear Material to India (Executive Order 12055)	333
(3) Export of Special Nuclear Material and Components to India (Executive Order 12218)	334
d. Department of Energy Act of 1978—Civilian Applications (Public Law 95-238) (partial text)	335
3. Delegating to the Secretary of State Certain Functions With Respect to the Negotiation of International Agreements Relating to the Enhancement of the Environment (Executive Order 11742)	337
4. Defense Production Act Amendments of 1975, as amended (Public Law 94-152) (partial text)	338
5. Energy Coordinating Committee (Executive Order 12083)	343
6. Negotiations With Canada Concerning the Alaska Pipeline (Public Law 93-153) (partial text)	345
7. Energy Policy and Conservation Act (Public Law 94-163) (partial text)	347
8. Extension of the International Energy Program (Public Law 96-133) (partial text)	372
9. Energy Emergency Preparedness Act of 1982 (Public Law 97-229) (partial text)	374
10. Nuclear Waste Policy Act of 1982 (Public Law 97-425) (partial text)	377
11. International Environmental Protection Act of 1983 (Public Law 98-164) (partial text)	379
12. Global Climate Protection (Public Law 100-204) (partial text)	382

Page
13. International Energy Emergency Authorities: Extension (Public Law 100-373) 385
14. Temporary Emergency Wildfire Suppression Act (Public Law 100-428) 386
15. Rio Grande Pollution Correction Act of 1987 (Public Law 100-465) 388
16. African Elephant Conservation Act (Title II of Public Law 100-478) 390

1. Atomic Energy Act and Related Materials

a. Atomic Energy Act of 1954, as amended

Partial Text of Public Law 83-703 [H.R. 9757], 68 Stat. 919, approved August 30, 1954, as amended by Public Law 84-337 (69 Stat. 630); by Public Law 84-722 (70 Stat. 553); by Public Law 84-1006 (70 Stat. 1069); by Public Law 85-14 (71 Stat. 11); by Public Law 85-79 (71 Stat. 274); by Public Law 85-162 (71 Stat. 410); by Public Law 85-177 (71 Stat. 455); by Public Law 85-256 (71 Stat. 576); by Public Law 85-287 (71 Stat. 612); by Public Law 85-479 (72 Stat. 276); by Public Law 85-507 (72 Stat. 337); by Public Law 85-602 (72 Stat. 525); by Public Law 85-681 (72 Stat. 632); by Public Law 85-744 (72 Stat. 837); by Public Law 86-43 (73 Stat. 73); by Public Law 86-50 (73 Stat. 87); by Public Law 86-300 (73 Stat. 574); by Public Law 86-373 (73 Stat. 688); by Public Law 87-206 (75 Stat. 476); by Public Law 87-615 (76 Stat. 409); by Public Law 87-793 (76 Stat. 864); by Public Law 88-72 (77 Stat. 88); by Public Law 88-294 (78 Stat. 172); by Public Law 88-394 (78 Stat. 376); by Public Law 88-426 (78 Stat. 423); by Public Law 88-448 (78 Stat. 490); by Public Law 88-489 (78 Stat. 602); by Public Law 89-135 (79 Stat. 551); by Public Law 89-210 (79 Stat. 855); by Public Law 89-645 (80 Stat. 891); by Public Law 90-190 (81 Stat. 577); by Public Law 91-161 (83 Stat. 444); by Public Law 91-452 (84 Stat. 930); by Public Law 91-560 (84 Stat. 1472); by Public Law 92-84 (85 Stat. 307); by Public Law 92-307 (86 Stat. 191); by Public Law 92-314 (86 Stat. 227); by Public Law 93-377 (88 Stat. 472); by Public Law 93-438 (88 Stat. 1233); by Public Law 93-485 (88 Stat. 1460); by Public Law 93-514 (88 Stat. 1611); by Public Law 94-197 [H.R. 8631], 89 Stat. 1111, approved Dec. 31, 1975; by Public Law 95-110 [S. 1153], 91 Stat. 884, approved Sept. 20, 1977; by Public Law 95-242 (92 Stat. 120); by Public Law 95-601 (92 Stat. 2947 at 2950); by Public Law 95-604 (92 Stat. 3021); by Public Law 96-106 (93 Stat. 796 at 800); by Public Law 96-295 (94 Stat. 780 at 786); by Public Law 97-164 (96 Stat. 25 at 48 and 49); by Public Law 97-90 (95 Stat. 1171); by Public Law 97-415 (96 Stat. 2067); by Public Law 99-64 (99 Stat. 120); by Public Law 99-399 [H.R. 4151], 100 Stat. 853, approved August 27, 1986; and by Public Law 100-408 [H.R. 1414], 102 Stat. 1066, approved August 20, 1988

AN ACT To amend the Atomic Energy Act of 1946, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Atomic Energy Act of 1946, as amended, is amended to read as follows:

ATOMIC ENERGY ACT OF 1954 [1]

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

Section 1. Declaration.—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contributions to the common defense and security; and

[1] 42 U.S.C. 2011-2281.

b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

Sec. 2. Findings.[2]—The Congress of the United States hereby makes the following findings concerning the development, use, and control of atomic energy:

a. The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

c.[3] The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

d. The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

e. Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

f. The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.

g. Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

i.[4] In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.[5]

Sec. 3. Purpose.—It is the purpose of this Act to effectuate the policies set forth above by providing for—

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[2] Sec. 20 of Public Law 88-489 (78 Stat. 602) (1964), the Private Ownership of Special Nuclear Materials Act, reads as follows:

"Nothing in this Act shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, to regulate source, byproduct, and special nuclear material and production and utilization facilities, or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives."

[3] Public Law 88-489 (78 Stat. 602) (1964), sec. 1, deleted subsec. 2b. Subsec. 2b. read as follows:

"b. In permitting the property of the United States to be used by others, such use must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."

[4] Public Law 88-489 (78 Stat. 602), sec. 2, deleted subsec. 2h. Subsec. 2h. read as follows:

"h. It is essential to the common defense and security that title to all special nuclear material be in the United States while such special material is within the United States."

[5] Public Law 88-256 (71 Stat. 576) (1957), sec. 1, added subsec. i.

a. a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contributions to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons; [6]

d. a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

e. a program of international cooperation to promote the common defense and security and to make peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

Chapter 2. Definitions

Sec. 11. Definitions.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. The term "agency of the United States" means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

b. The term "agreement for cooperation" means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91c.,[7] 103, 104, or 144, and made pursuant to section 123.

c. The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

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[6] Public Law 88-489 (78 Stat. 602) (1964), sec. 3, amended subsec. c. It formerly read:
"c. A program for Government control of the possession, use, and production of atomic energy and special nuclear material so directed as to make the maximum contribution to the common defense and security and the national welfare;"

[7] The reference to 91c. was added by sec. 2 of Public Law 87-206 (75 Stat. 475) (1961).

d. The term "atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

e.[8] The term "byproduct material" means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

f. The term "Commission" means the Atomic Energy Commission.

g. The term "common defense and security" means the common defense and security of the United States.

h. The term "defense information" means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

i. The term "design" means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

j.[9] The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,[10] determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,[10] determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,[10] that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,[10] shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,[10] indemnity agreement, entered into pursuant to section 170.

k.[11] The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

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[8] Subsec. e. was amended and restated by sec. 201 of Public Law 95-604 (92 Stat. 3033). The former definition of "byproduct material" included only the text found in phrase (1) of the current subsec. e.

[9] Public Law 98-645 (80 Stat. 891) (1966), sec. 1, added subsecs. j and m.

[10] The text "Nuclear Regulatory Commission or the Secretary of Energy, as appropriate," was inserted in lieu of "Commission" by sec. 16(b)(1) of Public Law 100-408 (102 Stat. 1079).

[11] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. k.

l. The term "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

m.[9] The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,[10] with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

n. The term "international arrangement" means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

o. The term "Joint Committee" means the Joint Committee on Atomic Energy.

p. The term "licensed activity" means an activity licensed pursuant to this Act and covered by the provisions of section 170 a.[12]

q.[13, 14] The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence [13] within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section [15] 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section [15] 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material [16] owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section [15] 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act which is used in connection with the operation of a licensed stationary production or utilization facility or which moves

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[12] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. p.

[13] Sec. 1 of Public Law 89-645 (80 Stat. 891) (1966), redesignated subsec o. as "q." and inserted the text, "including an extraordinary nuclear occurrence."

[14] Subsec. q. was added as subsec. o. by sec. 3 of Public Law 85-256 (71 Stat. 576) (1957), and subsequently amended and restated by sec. 4 of Public Law 87-615 (76 Stat. 409) (1962). Previously, this subsec. read: "o. The term 'nuclear incident' means any occurrence within the United States causing bodily injury, sickness, disease, or death, or loss of or damage to property, or for loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in subsection 170 l., it shall mean any such occurrence outside of the United States rather than within the United States."

[15] Sec. 16(d)(1) of Public Law 100-408 (102 Stat. 1079) inserted section in lieu of "subsection".

[16] Public Law 94-197 (89 Stat. 1111) (1975), sec. 1, substituted "source, special nuclear, or byproduct material" for "a facility or device" in the second proviso and added the third proviso.

outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission [17] to another person licensed by the Nuclear Regulatory Commission.[16, 17]

r. The term "operator" means any individual who manipulates the controls of a utilization or production facility.

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

t.[18] The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section [19] 170 c., and with respect to any other nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship *Savannah*, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy [20] or any project to which indemnification under the provisions of section [19] 170 d. has been extended or under any subcontract, purchase order or other agreement, of any tier, under any such contract or project.

u. The term "produce", when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

v. The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

w. The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a

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[17] The words "Nuclear Regulatory Commission" were inserted in lieu of "Commission" by sec. 16(a)(1) of Public Law 100-408 (102 Stat. 1079).

[18] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. t. Public Law 87-615 (76 Stat. 409) (1962), sec. 5, amended the subsection. Before amendment, it read: "r. The term 'person indemnified' means the person with whom an indemnity agreement is executed and any other person who may be liable for public liability." Public Law 94-197 (89 Stat. 1111) (1975), sec. 1, further amended the subsection.

[19] Sec. 16(d)(2) of Public Law 100-408 (102 Stat. 1079) inserted section in lieu of "subsection".

[20] Sec. 16(b)(2) of Public Law 100-408 (102 Stat. 1079), inserted the words "Secretary of Energy" in lieu of "Commission".

nuclear incident or a precautionary evacuation),[21] except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k. of 170,[22] claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity which the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.[23]

x. The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

y. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

z. The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

aa. The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

bb. The term "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.[24]

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[21] The words to this point, following "nuclear incident" the first place it appears, were added by sec. 4(b) of Public Law 100-408 (102 Stat. 1069).

[22] Sec. 16(d)(3) of Public Law 100-408 (102 Stat. 1080), inserted "subsections a., c., and k. of 170" in lieu of "subsections 170 a., c., and k.".

[23] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. w. Subsec w. was subsequently amended by Public Law 87-206 (75 Stat. 475) (1961). Before amendment, it read:

"u. The term 'public liability' means any legal liability arising out or resulting from a nuclear incident, except claims under State or Federal Workmen's Compensation Acts of employees or persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs, and except for claims arising out of an act of war. 'Public liability' also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs."

[24] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 1, amended this definition. Before amendment it read:

"u. The term 'United States', when used in a geographical sense, includes all Territories and possessions of the United States, and the Canal Zone."

cc. The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

dd.[25] The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee.[25] The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater that 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff.[25] The term "nuclear waste activities", as used in section 170, means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).

gg.[26] The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

hh.[27] The term "public liability action", as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

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[25] Subsecs. dd., ee., and ff. were added by sec. 4(b) of Public Law 100-408 (102 Stat. 1069).
[26] Subsec. gg. was added by sec. 5(b) of Public Law 100-408 (102 Stat. 1070).
[27] Subsec. hh. was added by sec. 11(b) of Public Law 100-408 (102 Stat. 1076).

jj.[28] LEGAL COSTS.—As used in section 170, the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

CHAPTER 3. ORGANIZATION [29]

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CHAPTER 6. SPECIAL NUCLEAR MATERIAL

Sec. 51. Special Nuclear Material.—The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Joint Committee, after having received such determination, may be resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

* * * * * *

Sec. 54.[30] Foreign Distribution of Special Nuclear Material.—a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to

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[28] Subsec. jj. was added by sec. 11(d)(2) of Public Law 100-408 (102 Stat. 1078).

[29] Sec. 104(a) of the Energy Reorganization Act of 1974 (Public Law 93-438, 88 Stat. 1237, approved October 11, 1974; 42 U.S.C. 5801-5891) repealed sections 21 and 22 (42 U.S.C. 2031 and 2032) of ch. 3, abolishing the Atomic Energy Commission created thereunder and vesting its licensing and related regulatory authority of facilities under chapters 6, 7, 8, and 10 in a new Nuclear Regulatory Commission and transferring all its other functions to a new Energy Research and Development Administration. All functions of the Energy Research and Development Administration were subsequently transferred to the Department of Energy which was established, effective October 1, 1977, pursuant to the Department of Energy Organization Act (91 Stat. 569) and Executive Order 12009 of September 13, 1977.

[30] Sec. 54 was amended and restated by sec. 2 of Public Law 93-377 (88 Stat. 472).

the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however,* That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however,* That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Joint Committee and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further,* That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: *And provided further,* That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more

by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57 d., exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

d.[31] The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

e.[32] The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2)(E) shall be subject to the requirements of section 131.

Sec. 55.[33] Acquisition.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 or any guaranteed purchase prices established pursuant to section 56, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by

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[31] Subsec. d. was added by sec. 301(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 125).

[32] Subsec. e. was added by sec. 303(b)(1) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 131).

[33] Public Law 88-489 (78 Stat. 602) (1964), sec. 10, amended sec. 55 by substituting a new sec. 55. Before amendment sec. 55 read as follows:

"SEC. 55. ACQUISITION.—The Commission is authorized to purchase or otherwise acquire any special nuclear material or any interest therein outside the United States without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes."

the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section: *Provided,* That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangements under section 131 a. (2)(E) shall be subject to the requirements of section 131.[34]

Sec. 56. Guaranteed Purchase Prices.—The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 103 or section 104 and delivered to the Commission within the period of the guarantee.[35] Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided,* That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 53.[36]

Sec. 57.[37] Prohibition.—

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[34] The proviso clause was added by sec. 303(b)(2) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 131).

[35] Public Law 91-500 (84 Stat. 1472) (1970), sec. 2, added "section 103 or" to this sentence.

[36] Public Law 88-489 (78 Stat. 602) (1964), sec. 11 amended sec. 56 by substituting a new sec. 56. Before amendment sec. 56 read as follows:

"SEC. 56. FAIR PRICE.—In determining the fair price to be paid by the Commission pursuant to section 52 for the production of any special nuclear material, the Commission shall take into consideration the value of the special nuclear material for its intended use by the United States and may give such weight to the actual cost of producing that material as the Commission finds to be equitable. The fair price, as may be determined by the Commission, shall apply to all licensed producers of the same material: *Provided, however,* That the Commission may establish guaranteed fair prices for all special nuclear material delivered to the Commission for such period of time as it may deem necessary not to exceed seven years."

[37] Public Law 88-489 (78 Stat. 602) (1964), sec. 12 amended sec. 57 substituting a new sec. 57. Before amendment sec. 57 read as follows:

"SEC. 57. PROHIBITION.—

"a. It shall be unlawful for any person to—

"(1) possess or transfer any special nuclear material which is the property of the United States except as authorized by the Commission pursuant to subsec. 53 a.;

"(2) transfer or receive any special nuclear material in interstate commerce except as authorized by the Commission pursuant to subsection 25 a., or export from or import into the United States any special nuclear material; and

"(3) directly or indirectly engage in the production of any special nuclear material outside of the United States except (A) under an agreement for cooperation made pursuant to section 123, or (B) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States.

"b. The Commission shall not distribute any special nuclear material—

"(1) to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

"(2) to any person within the United States, if the Commission finds that the distribution of such special nuclear material to such person would be inimical to the common defense and security."

a. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

b.[38] It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided,* That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978, establish orderly and expeditious procedures,[39] including provision for necessary administrative actions and inter-agency memoranda of understanding, which as mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978 shall not be delayed

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[38] Subsec. b. was amended and restated by sec. 302 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 126). It formerly read as follows:

"b. It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) under an agreement for cooperation made pursuant to sec. 123, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States."

[39] See text of procedures in Legislation on Foreign Relations Through 1988, vol. V, sec. L.

pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further,* That the export of component parts as defined in subsection 11 v. (2) or 11 cc. (2) shall be governed by sections 109 and 126 of this Act: *Provided further,* That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95–91), the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54 d., section 64, or section 111 b.

c. The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

(2) distribute any special nuclear material or issue a license pursuant to section 53 to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

d.[40] The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

e.[41] Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

Sec. 58.[42] Review.—Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 53, the proposed guaranteed purchase price, guaranteed purchase price period, or crite-

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[40] Subsec. d. was added by sec. 3 of Public Law 93–377 (88 Stat. 472 at 475).

[41] Sec. 14 of Public Law 97–415 (96 Stat. 2075) added subsec. (e).

[42] Public Law 88–489 (78 Stat. 602) (1964), sec. 13, amended sec. 58 by substituting a new sec. 58. Before amendment sec. 58 read as follows:

"SEC. 58. REVIEW.—Before the Commission establishes any fair price or guaranteed fair price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed or distributed under section 53 the proposed fair price, guaranteed fair price period, or criteria for the waiver of such charge shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however,* That the Joint Committee, after having received the proposed fair price, guaranteed fair price period, or criteria for the waiver of such charge, may by resolution waive the conditions of or all or any portion of such forty-five day period."

ria for the waiver of such charge shall be submitted to the Joint Committee and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however,* That the Joint Committee, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five day period.

Chapter 7. Source Material

Sec. 61. Source Material.—The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Joint Committee, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

Sec. 62. License for Transfers Required.—Unless authorized by a general or specific license issued by the Commission, which the Commission is hereby authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

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Sec. 64. Foreign Distribution of Source Material.—The Commission is authorized to cooperate with any nation by distribution source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of

source material in excess of three metric tons per year per recipient.[43]

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Sec. 69. Prohibition.—The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

Chapter 8. Byproduct Material

Sec. 81. Domestic Distribution.—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84.[44] The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to licensees [45] with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. Licensees of the Commission may distribute byproduct material only to applicants therefor who are licensed by the Commission to receive such byproduct material. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

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[43] This sentence was added by sec. 301(b) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 125).

[44] The reference to sec. 84 was added by sec. 205(b) of Public Law 95-604 (92 Stat. 3039).

[45] Sec. 4 of Public Law 93-377 (88 Stat. 472 at 475) deleted the word "licensees" and substituted "qualified applicants".

Sec. 82. Foreign Distribution of Byproduct Material.—

a. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party an which is made in accordance with section 123.

b. The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such materials as would be charged for the material if it were distributed within the United States: *Provided, however,* That the Commission shall not distribute any such material to any person under this section if, in its opinion, such distribution would be inimical to the common defense and security: *And provided further,* That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

c. The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

Sec. 83.[46] Ownership and Custody of Certain Byproduct Material and Disposal Sites.—

a. Any license issued or renewed after the effective date of this section under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11 e. (2), shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

(2) ownership of any byproduct material, as defined in section 11 e. (2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

b. (1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11 e. (2), pursuant to such license shall be transferred to—

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[46] Sec. 83 was added by sec. 202(a) of Public Law 95-604 (92 Stat. 3033). However, sec. 202(b) of that act stated that sec. 83 would not be effective until Nov. 8, 1981. The last sentence of subsec. a. was amended and restated by sec. 20(c) of Public Law 96-106.

(i) the United States, or

(ii) the State in which such land is located, at the option of such State,

unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 81 of this Act in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

(4) In the case of any such license under section 62, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interest therein (described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.

(6) The transfer of title to land or byproduct materials, as defined in section 11 e. (2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11 e. (2), the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

c. Upon termination of any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

Sec. 84.[47] Authorities of Commission Respecting Certain Byproduct Material.—

a. The Commission shall insure that the management of any byproduct material, as defined in section 11 e. (2), is carried out in such manner as—

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material, taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such

[47] Sec. 84 was added by sec. 205(a) of Public Law 95-604 (92 Stat. 3039).

other factors as the Commission determines to be appropriate,[48]

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administration under Solid Waste Disposal Act, as amended.

b. In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provision of this Act.

c.[49] In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e. (2), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this Act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275.

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[48] The words to this point beginning with "taking into account the risk to the public health, * * *" were added by sec. 22(a) of Public Law 97-415 (96 Stat. 2080).

[49] Sec. 20 of Public Law 97-415 (96 Stat. 2079) added subsec. c.

Chapter 9. Military Application of Atomic Energy

Sec. 91. Authority.—

a. The Commission is authorized to—

(1) conduct experiments and do research and development work in the military application of atomic energy; and

(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year.

b. The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided, however,* That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

c.[50] The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation and, notwithstanding the provisions of section 57, 62, or 81, to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President.

(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;

(2) utilization facilities for military applications; and

(3) source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and

(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided, however,* That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further,* That such nation has made substantial progress in the development of atomic weapons,

whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by

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[50] Public Law 85-479 (72 Stat. 276) (1958), sec. 1, added subsec. c.

substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123: *And provided further,* That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation.

Sec. 92.[51] **Prohibition.**—It shall be unlawful, except as provided in section 91, for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101.

Chapter 10. Atomic Energy Licenses

Sec. 101. License Required.—It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use,[52] import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104.

Sec. 102.[53] **Utilization and Production Facilities for Industrial or Commercial Purposes.—**

a. Except as provided in subsections b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104 b. prior to enactment into law of this subsection, shall be issued under subsection 104 b.

c. Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104 b.

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[51] Public Law 85-479 (72 Stat. 276), sec. 2, amended sec. 92 by substituting a new sec. 92. Before amendment sec. 92 read as follows:

"Sec. 92. Prohibition.—It shall be unlawful for any person to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon, except as may be authorized by the Commission pursuant to the provisions of section 91. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101."

[52] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 11, added the word "use".

[53] Public Law 91-560 (84 Stat. 1472) (1970), sec. 3, amended sec. 102. Prior to amendment it read as follows:

"Sec. 102. Finding of Practical Value.—Whenever the Commission has made a finding in writing that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes, the Commission may thereafter issue licenses for such type of facility pursuant to section 103."

Sec. 103. Commercial Licenses.—

a. The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use,[54] import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes.[55] Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

b. The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such license as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123, or except under the provisions of section 109. No license may be issued to an alien or any [56] corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

f.[57] Each license issued for a utilization facility under this section or section 104 b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for

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[54] Public Law 84-1006 (70 Stat. 1969), sec. 12, added the word "use.".

[55] Public Law 91-650 (84 Stat. 1472) (1970), sec. 4, amended the first sentence of sec. 103 a. Before amendment it read as follows:

"Subsequent to a finding by the Commission as required in section 102, the Commission may issue licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, such type of utilization or production facility."

[56] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 13, added the words "an alien or any" between the words "to" and "any" in the second sentence of subsec. 103 d.

[57] Subsec. f. was added by sec. 201(a) of Public Law 96-295 (94 Stat. 786).

normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104 b. which is in effect on the date of enactment of this subsection to include the provision required under this subsection.

Sec. 104. Medical Therapy and Research and Development.—

a. The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect the health and safety of the public.

b.[58] As provided for in subsection 102 b. or 102 c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act.

c. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 31 and which are not facilities of the type specified in subsection 104 b. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 or except under the provisions of section 109. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign gov-

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[58] Public Law 91-560 (84 Stat. 1472) (1970), sec. 5, amended subsection 104 b. Before amendment it read as follows:

"b. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will be compatible with the regulations and terms of license which would apply in the event that a commercial license were later to be issued pursuant to section 103 for that type of facility. In issuing such licenses, priority shall be given to those activities which will, in the opinion of the Commission, lead to major advances in the application of atomic energy for industrial or commercial purposes."

ernment. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

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Sec. 109.[59] **Component and Other Parts of Facilities.**—

a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11 v. (2) or 11 cc. (2) the Commission may issue general licenses for domestic activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

b. After consulting with the Secretaries of State, Energy, and Commerce and the Director, the Commission is authorized and directed to determine which component parts as defined in subsection 11 v. (2) or 11 cc. (2) and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b. (2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided,* That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act.

c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126 a., that the export would be inimical to the common defense and security of the United States.

Sec. 111.[60] a. The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source mate-

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[59] Sec. 109 was amended and restated by sec. 309(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 141). Sec 309(b) of that act also instructed the Commission to publish regulations to implement the provisions of subsecs. b. and c. of sec. 109. Sec. 309(d) of that same act also stated that the amendments to sec. 109 would not affect the approval of exports contracted for prior to Nov. 1, 1977, which are made by Mar. 10, 1979.

[60] Sec. 111 was added by sec. 301(c) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 125).

rial, and byproduct material by the Department of Energy pursuant to sections 54, 64, and 82 of this Act, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided,* That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act.

b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act or their equivalent and any application criteria in subsection 128 are met, and that the proposed distribution would not be inimical to the common defense and security.

Chapter 11. International Activities

Sec. 121. Effect of International Arrangements.—Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act shall be deemed to be of no force or effect.

Sec. 122. Policies Contained in International Arrangements.—In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

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Sec. 123.[61] Cooperation With Other Nations.—

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment

[61] Sec. 123, as previously amended by Public Law 85–479 (72 Stat. 276). Public Law 85–681 (72 Stat. 632), and Public Law 88–489 (78 Stat. 602), was further amended and restated by sec. 401 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 142). Sec. 405(a) of the 1978 Act also stated that these amendments to sec. 123 would not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to Mar. 10, 1978. Sec. 407 also of the 1978 act specified that for any agreement entered into pursuant to sec. 123, the President shall strive to include in such agreement cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to subsection 91 c., 144 b. or 144 c., any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that no material trans-

ferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear material which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that no plutonium, no uranium 223, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation or recovered from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperation party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., or 144 c.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize that common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director"); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendation of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) [62] which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set

forth in this subsection, and (B) [62] regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c., or 144 b. which are to be implemented by the Department of Defense, by the Secretary of Defense;

b. the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and [63] the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however*, That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., or 144 c., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., the Committee on Armed

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[62] The text begining with "(A)" and ending with "(B)" was added by sec. 301(a)(1) the Export Administration Amendments Act of 1985 (Public Law 99-64; 99 Stat. 159).

[63] The text of subsec. b. to this point was added by sec. 301(a)(2) of Public Law 99-64 (99 Stat. 159).

Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint [64] resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection 123 a., has been submitted to the Congress: *Provided further,* That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.[65] During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved.[66] Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act for the consideration of Presidential submissions.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c.) to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

i If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

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[64] Sec. 301(b)(1) of Public Law 99-64 changed the requirement from a concurrent to a joint resolution.

[65] The second proviso of subsec d. was added by sec. 301(b)(2) of Public Law 99-64.

[66] The sentence which ends here was added by sec. 301(a)(3) of Public Law 99-64.

Sec. 124. International Atomic Pool.—The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 54 a., 57, 64, 82, 103, 104, or 114 a.: *Provided, however,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

Sec. 125.[67] **Cooperation With Berlin.**—The President may authorize the Commission to enter into agreement for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdiction (the United States, British, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections 54 a., 57, 64, 82, 103, or 104: *Provided,* That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants.

Sec. 126.[68] **Export Licensing Procedures.**—

a. No license may be issued by the Nuclear Regulatory Commission (the "Commission") for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under section 54, 64, or 82, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until—

(1) The Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures,[69] including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent

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[67] Sec. 125 was added by Public Law 85-14 (71 Stat. 11).
[68] Sec. 126 was added by sec. 304(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 131).
[69] See text of procedures in Legislation on Foreign Relations Through 1988, vol. V, sec. L.

meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provision of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

(A) whether issuing the license or granting the exemption will materially advance the non-proliferation policy of the United States by encouraging the recipient nation to adhere to the Treaty, or to participate in the undertakings contemplated by section 403 or 404(a) of the Nuclear Non-Proliferation Act of 1978;

(B) whether failure to issue the license or grant the exemption would otherwise be seriously prejudicial to the non-proliferation objectives of the United States; and

(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 127 of this Act will be applied by another nuclear supplier nation or group of nations to the proposed United States export, and whether in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States.

The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be; and

(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 127 of this Act or their equivalent, and any other

applicable statutory requirements, are met: *Provided,* That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 for a period of thirty days after enactment of this section, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation Act of 1978; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section: *Provided further,* That if, upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act; *And additionally provided,* That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no materially changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no materially changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such findings in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review. *And provided further,* That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently con-

ducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

b. (1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order.[70] *Provided,* That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g.) and shall be referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions: *And provided further,* That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the projected issuance of such licenses and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the

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[70] Pursuant to Presidential Memorandum of Oct. 3, 1980 (45 F.R. 67629), the Secretary of State is authorized to determine the "time, terms, and conditions of exports made pursuant to any Executive Order" issued under this paragraph. This memorandum also authorized the Secretary, on behalf of the President, to issue "such rules, regulations and procedures" as he may deem necessary in order to exercise the functions delegated to him by the memorandum.

proposed export beings would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of any additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further,* That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a. (1) of this section.

c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act.

Sec. 127.[71] **Criteria Governing United States Nuclear Exports.**—The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nu-

[71] Sec. 127 was added by sec. 305 of the Nuclear Non-Proliferation Act of 1978 (92 Stat 136).

clear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 304(d) of the Nuclear Non-Proliferation Act of 1978, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

Sec. 128.[72] Additional Export Criterion and Procedures.—

a. (1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

b. The criterion set forth in subsection a. shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection a. which is filed after eighteen months from the date of enactment of this section, or for any such application under which the first export would occur at least twenty-four months after the date of enact-

[72] Sec. 128 was added by sec. 306 of the Non-Proliferation Act of 1978 (92 Stat. 137).

ment of this section, except as provided in the following paragraphs:

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of law: *Provided,* That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection a. shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided,* That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further,* That if the Congress adopts a resolution of disapproval

during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

Sec. 129.[73] Conduct Resulting in Termination of Nuclear Exports.—

No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after the effective date of this section,

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security: *Provided,* That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be sub-

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[73] Sec. 129 was added by sec. 307 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 138).

mitted to the Congress and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

Sec. 130.[74] Congressional Review Procedures.—

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 126 a. (2), 126 b. (2), 128 b., 129, 131 a. (3), or 131 f. (1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives,[75] shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided,* That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission.[76] If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

b. When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection a.) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a., as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

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[74] Sec. 130 was added by sec. 308 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 139).

[75] At this point, sec. 301(c)(1) of Public Law 99-64 (99 Stat. 160) struck out the following words: ", and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate,".

[76] At this point, sec. 301(c)(1) of Public Law 99-64 (99 Stat. 160) struck out the following words: "and if, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution".

c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures cf this section is in order except as provided in subsection d.

d. Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

e. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

f. For the purposes of subsections a. through e. of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the ..... transmitted to the Congress by the President on ....., ...", the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parentheses to be appropriately selected.

g. (1) Except as provided in paragraph (2), for [77] the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the

computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 123—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.[78]

h. This section is enacted by Congress—

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[77] The text to this point, beginning with "g. (1)" was inserted in lieu of "For", by sec. 301(c)(1) of Public Law 99-64 (99 Stat. 160).

[78] Par. 2 was added by sec. 301(c)(2)(A) of Public Law 99-64 (99 Stat. 160).

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection f. of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

i.[79] (1) For the purposes of this subsection, the term "joint resolution" means a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on .", with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parentheses appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123 d., a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91 c., 144 b., or 144 c., the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter, except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

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[79] Subsec. (i) was added by sec. 301(c)(2)(B) of Public Law 99-64 (99 Stat. 161).

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution in that House, that House received a joint resolution with respect to the same matter from the other House, then—

(A) the procedures in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

Sec. 131.[80] Subsequent Arrangements.—

a. (1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Director, the Commission, and the Secretary of Defense: *Provided,* That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Director declares that he intends to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the Director's declaration shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.[81]

(2) If in the Director's view a proposed subsequent arrangement might significantly contribute to proliferation, he may prepare an unclassified Nuclear Proliferation Assessment Statement [73] with

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[80] Sec. 131 was added by sec. 303(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 127).

[81] Sec. 406 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 148) provides that "No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in the 1954 Act."

regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term "subsequent arrangements" means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

(A) contracts for the furnishing of nuclear materials and equipment;

(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

(C) authorization for the distribution of nuclear materials and equipment pursuant to this Act which is not subject to the procedures set forth in section 111 b., section 126, or section 109 b.;

(D) arrangements for physical security;

(E) arrangements for the storage or disposition of irradiated fuel elements;

(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

(3) The United States will give timely consideration to all requests for prior approval, when required by this Act, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 123 of this Act.

(4) All other statutory requirements under other sections of this Act for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to subsection a.(1).

b. With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in

quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130 g. of this Act) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978 or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978, or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in this view, and that of the Secretary of State, satisfy the standards set forth in the paragraph (2).

c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section.[82] Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection

[82] See text of procedures in Legislation on Foreign Relations Through 1988, vol. V, sec. L.

of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Director shall so declare in his response to the Department of Energy. If the Director declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Director's request, the President waives the sixty-day requirement and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

d. Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 105 of the Nuclear Non-Proliferation Act of 1978; to in any way limit the presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other participation; nor the prejudice open and objective consideration of the results of the evaluation.

e. Notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

f. (1) With regard to any subsequent arrangement under subsection a. (2)(E) (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the

United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), which plan has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions;

(B) The Secretary of Energy has complied with subsection a.; and

(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this Act, under sections 54 and 55 and any other applicable sections, and any other requirements of law.

(2) Subsection (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on International Relations and Science and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

(3) Any plan submitted by the President under subsection f. (1) shall include a detailed discussion, with detailed information, and any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

(4) For the purposes of this subsection, the term "foreign spent nuclear fuel" shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and oper-

ated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or the reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

Sec. 132.[83] Authority to Suspend Nuclear Cooperation with Nations Which Have Not Ratified the Convention on the Physical Security of Nuclear Material.—

The President may suspend nuclear cooperation under this Act with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material.

Sec. 133.[84] Consultation with the Department of Defense Concerning Certain Exports and Subsequent Arrangements.—

a. In addition to other applicable requirements—

(1) a license may be issued by the Nuclear Regulatory Commission under this Act for the export of special nuclear material described in subsection b.; and

(2) approval may be granted by the Secretary of Energy under section 131 of this Act for the transfer of special nuclear material described in subsection b.;

only after the Secretary of Defense has been consulted on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would result in the diversion of that material. If, in the view of the Secretary of Defense based on all available intelligence information, the export or transfer might be subject to a genuine terrorist threat, the Secretary shall provide to the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, his written assessment of the risk and a description of the actions the Secretary of Defense considers necessary to upgrade physical protection measures.

b. Subsection a. applies to the export or transfer of more than 2 kilograms of plutonium or more than 20 kilograms of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.

Chapter 12. Control of Information

Sec. 141. Policy.—It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

a. Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144; and

b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essen-

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[83] Sec. 132 was added by sec. 602 of Public Law 99-399 (100 Stat. 875).
[84] Sec. 133 was added by sec. 603 of Public Law 99-399 (100 Stat. 875).

tial to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

Sec. 142. Classification and Declassification of Restricted Data.—

a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

b. The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

c. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

d. The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection 144 b.

e. The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information.

Sec. 143. Department of Defense Participation.—The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsection 145 b. and 145 c.[85] to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have

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[85] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 14, added the words "or any other person authorized access to Restricted Data by the Commission under subsection 145 b." Public Law 87-206 (75 Stat. 475) (1961), sec. 5, deleted the words "subsection 145 b.," and substituted in lieu thereof the words, "subsections 145 b. and 145 c.".

access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145.

Sec. 144. International Cooperation.—

a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

(1) refining, purification, and subsequent treatment of source material;

(2) civilian reactor development;

(3) production of special nuclear material;

(4) health and safety;

(5) industrial and other applications of atomic energy for peaceful purposes; and

(6) research and development relating to the foregoing:

Provided, however, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123, or is undertaken pursuant to an agreement existing on the effective date of this act.[86]

b.[87] The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

(1) the development of defense plans;

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[86] Public Law 85–479 (72 Stat. 276) (1958), sec. 5, amended subsec. a of sec. 144 by inserting the word "civilian" before the words "reactor development" in clause (2) thereof.

[87] Public Law 85–479 (72 Stat. 276) (1958), sec. 6, amended sec. 144 by substituting a new subsec. b. Before amendment subsec. b. read as follows:

"b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data as is necessary to—

"(1) the development of defense plans;

"(2) the training of personnel in the employment of and defense against atomic weapons; and

"(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons.

"While such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That no such cooperation shall involve communication of Restricted Data relating to the design or fabrication of atomic weapons except with regard to external characteristics, including size, weight, and shape, yields and effects, and systems employed in the delivery or use thereof but not including any data in these categories unless in the joint judgment of the Commission and the Department of Defense such data will not reveal important information concerning the design or fabrication of the nuclear components of an atomic weapon: *And provided further,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123."

(2) the training of personnel in the employment of and defense against atomic weapons; and other military applications of atomic energy;

(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and

(4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

c.[88] In addition to the cooperation authorized in subsections 144 a. and 144 b., the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

(1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

(2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, or military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

d.[88] The President may authorize an agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144 a., b., or c., such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

Sec. 145. Restrictions.—

a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the

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[88] Public Law 85-479 (72 Stat. 276) (1958), sec. 7, amended sec. 144 by adding subsecs. c and d.

Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

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Sec. 147.[89] Safeguards Information.—

a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) control and accounting procedures or security measures (including security plans, procedures or equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

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[89] Sec. 147 was added by sec. 207(a)(1) of Public Law 96-295 (94 Stat. 788).

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

b. For the purposes of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

c. Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, di-

version or sabotage of such material, or such facility, as specified under subsection a. of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

Sec. 148.[90] Prohibition Against the Dissemination of Certain Unclassified Information.—

a. (1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code, the Secretary of Energy (hereinafter in this section referred to as the "Secretary"), with respect to atomic energy defense programs,[91] shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in subsection a. (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

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[90] Sec. 210(a)(1) of Public Law 97-90 (95 Stat. 1169) added sec. 148.

[91] Sec. 17(a) of Public Law 97-415 (96 Stat. 2076) added the words ", with respect to atomic energy defense programs,".

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

b. (1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed $100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

(2) The provisions of subsections b. and c. of section 234 of this Act shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection a. of such section.

c. For the purposes of section 223 of this Act, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

d.[92] Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5, United States Code.

e.[92] The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a.; and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

Sec. 149.[93] Fingerprinting for Criminal History Record Checks.—

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[92] Sec. 17(b) of Public Law 97-415 (96 Stat. 2076) added subsecs. d. and e.

[93] Sec. 149 was added by sec. 606 of Public Law 99-399 (100 Stat. 876).

a. The Nuclear Regulatory Commission (in this section referred to as the "Commission") shall require each licensee or applicant for a license to operate a utilization facility under section 103 or 104 b. to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information under section 147. All fingerprints obtained by a licensee or applicant as required in the preceding sentence shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints.

b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.

c. For purposes of administering this section, the Commission shall prescribe, subject to public notice and comment, regulations—

(1) to implement procedures for the taking of fingerprints;

(2) to establish the conditions for use of information received from the Attorney General, in order—

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to the facility of a licensee or applicant or shall be permitted access to safeguards information under section 147;

(C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—

(i) an arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal; and

(D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and

(3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.

d. (1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.

(2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—

(A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and

(B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.

(3) Any amount made available for use under paragraph (2) shall remain available until expended.

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CHAPTER 17. JOINT COMMITTEE ON ATOMIC ENERGY

[REPEALED—1977] [94]

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CHAPTER 19. MISCELLANEOUS

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Sec. 251. Report to Congress.—The Commission shall submit to the Congress, in January [95] of each year, a report concerning the activities of the Commission. The Commission shall include in such report, and shall at such other times as it deems desirable submit to the Congress, such recommendations for additional legislation as the Commission deems necessary or desirable.

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CHAPTER 20.[96] JOINT COMMITTEE ON ATOMIC ENERGY ABOLISHED; FUNCTIONS AND RESPONSIBILITIES REASSIGNED

Sec. 301. Joint Committee on Atomic Energy Abolished.—

a. The Joint Committee on Atomic Energy is abolished.

b. Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after the date of enactment of this section, be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

c. All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

Sec. 302. Transfers of Certain Functions of the Joint Committee on Atomic Energy and Conforming Amendments to Certain Other Laws.—

a. Effective on the date of enactment of this section, chapter 17 of this Act is repealed.

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[94] Sec. 302(a) of this act, as added by Public Law 95–110, repealed ch. 17. For matters regarding the reassignment of functions and responsibilities of the Joint Committee, see ch. 20.

[95] Public Law 86–43 (73 Stat. 73) (1959), amended sec. 251 by deleting the words "and July" after the word "January".

[96] Chapter 20 was added by Public Law 95–110 (91 Stat. 884).

b. Section 103 of the Atomic Energy Community Act of 1955, as amended, is repealed.

c. Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking the subsection designation "(a)"; and

(2) repealing subsection (b).

d. Section 252(a)(3) of the Legislative Reorganization Act of 1970 is repealed.

Sec. 303. Information and Assistance to Congressional Committees.—

a. The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

b. The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

c. Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

d. The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however,* That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Administration.

b. EURATOM Cooperation Act of 1958, as amended

Public Law 85-846 [S. 4273], 72 Stat. 1084, 42 U.S.C. 2291-2296, approved August 28, 1958; as amended by Public Law 87-206, 75 Stat. 479, approved September 6, 1961; by Public Law 88-394, 78 Stat. 376, approved August 1, 1964; by Public Law 90-190, 81 Stat. 578, approved December 14, 1967; and by Public Law 93-88, 87 Stat. 296, approved August 14, 1973

AN ACT To provide for cooperation with the European Atomic Energy Community.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "EURATOM Cooperation Act of 1958".

Sec. 2. As used in this Act—

(a) "The Community" means the European Atomic Energy Community (EURATOM).

(b) The "Commission" means the Atomic Energy Commission, as established by the Atomic Energy Act of 1954, as amended.

(c) "Joint program" means the cooperative program established by the Community and the United States and carried out in accordance with the provisions of an agreement for cooperation entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended, to bring into operation in the territory of the members of the Community powerplants using nuclear reactors of types selected by the Commission and the Community, having as a goal a total installed capacity of approximately one million kilowatts of electricity by December 31, 1963, except that two reactors may be selected to be in operation by December 31, 1965.

(d) All other terms used in this Act shall have the same meaning as terms described in section 11 of the Atomic Energy Act of 1954, as amended.

Sec. 3. There is hereby authorized to be appropriated to the Commission, in accordance with the provisions of section 261(a)(2) of the Atomic Energy Act of 1954, as amended, the sum of $3,000,000 [1] as an initial authorization for fiscal year 1959 for use in a cooperative program of research and development in connection with the types of reactors selected by the Commission and the Community under the joint program. The Commission may enter into contracts for such periods as it deems necessary, but in no event to exceed five years, for the purpose of conducting the research and development program authorized by this section: *Provided,* That the Community authorizes an equivalent amount for use in the cooperative program of research and development.

Sec. 4. The Commission is authorized, within limits of amounts which may hereafter be authorized to be appropriated in accord-

[1] Public Law 86-50 (sec. 109), Public Law 87-701 (sec. 109), Public Law 88-72 (sec. 103), Public Law 88-332 (sec. 101(a)), and Public Law 89-32 (sec. 101), authorized appropriation of an additional $7,000,000, $5,000,000, $7,500,000, $3,000,000, and $3,000,000, respectively.

ance with the provisions of section 261(a)(2) of the Atomic Energy Act of 1954, as amended, to make guarantee contracts which shall in the aggregate not exceed a total contingent liability of $90,000,000 designed to assure that the charges to an operator of a reactor constructed under the joint program for fabricating, processing, and transporting fuel will be no greater than would result under the fuel fabricating and fuel life guarantees which the Commission shall establish for such reactor. Within the limits of such amounts, the Commission is authorized to make contracts under this section, without regard to the provisions of sections 3679 and 3709 of the Revised Statutes, as amended, for such period of time as it determines to be necessary: *Provided, however,* That no such contracts may extend for a period longer than that necessary to cover fuel loaded into a reactor constructed under the joint program during the first ten years of the reactor operation or prior to December 31, 1973 (or December 31, 1975, for not more than two reactors selected under section 2(c)), whichever is earlier. In establishing criteria for the selection of projects and in entering into such guarantee contracts, the Commission shall be guided by, but not limited to, the following principles:

(a) The Commission shall encourage a strong and competitive atomic equipment manufacturing industry in the United States designed to provide diversified sources of supply for reactor parts and reactor fuel elements under the joint program;

(b) The guarantee shall be consistent with the provisions of this Act and of Attachment A to the Memorandum of Understanding between the Government of the United States and the Community, signed in Brussels on May 29, 1958, and in Washington, District of Columbia, on June 12, 1958, and transmitted to Congress on June 23, 1958;

(c) [2] The Commission shall establish and publish criteria for computing the maximum fuel element charge and minimum fuel element life to be guaranteed by the manufacturer as a basis for inviting and evaluating proposals.

(d) The guarantee by the manufacturer shall be as favorable as any other guarantee offered by the manufacturer for any comparable fuel element within a reasonable time period; and

(e) The Commission shall obtain a royalty-free, nonexclusive, irrevocable license for governmental purposes to any patents on inventions or discoveries made or conceived by the manufacturer in the course of development or fabrication of fuel elements during the period covered by the Commission's guarantee.

Sec. 5.[3] Pursuant to the provisions of section 54 of the Atomic Energy Act of 1954, as amended, there is hereby authorized for sale or lease to the Community—

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[2] Public Law 87-206 (75 Stat. 475), amended sec. 4(c). Prior to amendment it read: "The commission shall establish and publish minimum levels of fuel element cost and life to be guaranteed by the manufacturer as a basis for inviting and evaluating proposals."

[3] Public Law 90-190 (81 Stat. 575), sec. 13, amended sec. 5 by substituting a new section. Before amendment, sec. 5 read as follows:

"Sec. 5. Pursuant to the provisions of section 54 of the Atomic Energy Act of 1954, as amended, there is hereby authorized for sale or lease to the Community:

"Seventy thousand kilograms of contained uranium 235

"Five hundred kilograms of plutonium

Continued

an amount of contained uranium 235 which does not exceed that necessary to support the fuel cycle of power reactors located within the Community having a total installed capacity of thirty-five thousand megawatts of electric energy, together with twenty-five thousand kilograms of contained uranium 235 for other purposes; [4]

one thousand five hundred kilograms of plutonium; and thirty kilograms of uranium 233;

in accordance with the provisions of an agreement or agreements for cooperation between the Government of the United States and the Community entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended: *Provided,* That the Government of the United States obtains the equivalent of a first lien of any such material sold to the Community for which payment is not made in full at the time of transfer. The Commission may enter into contracts to provide, after December 31, 1968, for the producing or enriching of all, or part of, the above-mentioned contained uranium 235 pursuant to the provisions of subsection 161 v. (B) of said Act, as amended in lieu of sale or lease thereof.

Sec. 6. (a) The Atomic Energy Commission is authorized to purchase or otherwise acquire from the Community special nuclear material or any interest therein from reactors constructed under the joint program in accordance with the terms of an agreement for cooperation entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended: *Provided,* That neither plutonium nor uranium 233 nor any interest therein shall be acquired under this section in excess of the total quantities authorized by law. The Commission is hereby authorized to acquire from the Community pursuant to this section up to four thousand one hundred kilograms of plutonium for use only for peaceful purposes.

(b) Any contract made under the provisions of this section to acquire plutonium or any interest therein may be at such prices and for such period of time as the Commission may deem necessary: *Provided,* That with respect to plutonium produced in any reactor constructed under the joint program, no such contract shall be for a period greater than ten years of operation of such reactors or December 31, 1973 (or December 31, 1975, for not more than two reactors selected under section 2(c)), whichever is earlier: *And provided further,* That no such contract shall provide for compensation or the payment of a purchase price in excess of the Commission's established price in effect at the time of delivery to the Commission for such material as fuel in a nuclear reactor.

"Thirty kilograms of uranium 233

"In accordance with the provisions of an agreement or agreements for cooperation between the Government of the United States and the Community entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954 as amended: *Provided,* That the Government of the United States obtains the equivalent of a first lien of any such material sold to the Community for which payment is not made in full at the time of transfer."

Sec. 5 had earlier been amended by Public Law 88-394 (78 Stat. 376), sec. 5, and by Public Law 87-206 (75 Stat. 475), sec. 19.

[4] Public Law 93-88 (87 Stat. 296), amended this paragraph. Previously, it read "two hundred fifteen thousand kilograms of contained uranium 235;".

(c) Any contract made under the provisions of this section to acquire uranium enriched in the isotope uranium 235 may be at such price and for such period of time as the Commission may deem necessary: *Provided,* That no such contract shall be for a period of time extending beyond the terminal date of the agreement for cooperation with the Community or provide for the acquisition of uranium enriched in the isotope U-235 in excess of the quantities of such material that have been distributed to the Community by the Commission less the quantity consumed in the nuclear reactors involved in the joint program: *And provided further,* That no such contract shall provide for compensation or the payment of a purchase price in excess of the Atomic Energy Commission's established charges for such material in effect at the time delivery is made to the Commission.

(d) Any contract made under this section for the purchase of special nuclear material or any interest therein may be made without regard to the provisions of section 3679 of the Revised Statutes, as amended.

(e) Any contract made under this section may be made without regard to section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable.

Sec. 7. The Government of the United States of America shall not be liable for any damages or third party liability arising out of or resulting from the joint program: *Provided however,* That nothing in this section shall deprive any person of any rights under section 170 of the Atomic Energy Act of 1954, as amended. *And provided further,* That nothing in this section shall apply to arrangements made by the Commission under a research and development program authorized in section 3.[5] The Government of the United States shall take such steps as may be necessary, including appropriate disclaimer or indemnity arrangements, in order to carry out the provisions of this section.

[5] The proviso was added by Public Law 87-206 (75 Stat. 475).

c. EURATOM Resolution

Senate Concurrent Resolution 116, 85th Congress, 2d Session, passed August 23, 1958

Whereas the United States of America has instituted a program of international cooperation to make available to cooperating nations the benefits of peaceful applications of atomic energy; and

Whereas the United States of America and the European Atomic Energy Community (EURATOM) have entered into an agreement providing for cooperation in programs designed to advance the peaceful application of atomic energy: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That pursuant to the provisions of section 11(l) and 124 of the Atomic Energy Act of 1954, as amended, the agreement between the Government of the United States of America and the European Atomic Energy Community (EURATOM), signed at Brussels on May 29, 1958, and at Washington on June 19, 1958, concerning cooperation between the parties in programs for the advancement of the peaceful application of atomic energy, be and hereby is approved. This resolution does not constitute approval or disapproval of the memorandum of understanding, or any other agreements which have not been formally approved or authorized by the Congress.

d. Nuclear Cooperation With EURATOM

Executive Order 12629, March 9, 1988, 53 F.R. 7875

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155a(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, and 12587, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1989. Executive Order No. 12587 shall be superseded on the effective date of this Executive Order.

e. International Atomic Energy Agency Participation Act of 1957, as amended

Partial text of Public Law 85–177 [H.R. 8992], 22 U.S.C. 2021–2026, 71 Stat. 453, approved August 28, 1957; as amended by Public Law 85–795, 72 Stat. 959, approved August 28, 1958; by Public Law 89–348, 79 Stat. 1310, approved November 8, 1965; and by Public Law 96–465 [H.R. 6790], 94 Stat. 2071 at 2161, approved October 17, 1980

AN ACT To provide for the appointment of representatives of the United States in the organs of the International Atomic Energy Agency, and to make other provisions with respect to the participation of the United States in that Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Atomic Energy Agency Participation Act of 1957".

Sec. 2. (a) The President, by and with the advice and consent of the Senate, shall appoint a representative and a deputy representative of the United States to the International Atomic Energy Agency (hereinafter referred to as the "Agency"), who shall hold office at the pleasure of the President. Such representative and deputy representative shall represent the United States on the Board of Governors of the Agency, may represent the United States at the General Conference, and may serve ex officio as United States representative on any organ of that Agency, and shall perform such other functions in connection with the participation of the United States in the Agency as the President may from time to time direct.

(b) The President, by and with the advice and consent of the Senate, may appoint or designate from time to time to attend a specified session or specified sessions of the General Conference of the Agency a representative of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Conference.

(c) The President may also appoint or designate from time to time such other persons as he may deem necessary to represent the United States in the organs of the Agency. The President may designate any officer of the United States Government, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States on the Board of Governors or to the General Conference of the Agency in the absence or disability of the representative and deputy representative appointed under section 2(a) or in lieu of such representatives in connection with a specified subject matter.

(d) All persons appointed or designated in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed

but not in excess of rates authorized by sections 401, 402, and 403 of the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsection (b) or subsection (c) of this section as a delegate or representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation.[1] Any person who receives compensation pursuant to the provisions of this subsection may be granted allowances and benefits not to exceed those received under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service and Foreign Service officers occupying positions of equivalent importance.[2]

Sec. 3. The participation of the United States in the International Atomic Energy Agency shall be consistent with and in furtherance of the purposes of the Agency set forth in its statute and the policy concerning the development, use, and control of atomic energy set forth in the Atomic Energy Act of 1954, as amended. [The President shall, from time to time as occasion may require, but not less than once each year, make reports to the Congress on the activities of the International Atomic Energy Agency and on the participation of the United States therein.] [3] In addition to any other requirements of law, the Department of State and the Atomic Energy Commission shall keep the Joint Committee on Atomic Energy, the House Committee on Foreign Affairs, and the Senate Committee on Foreign Relations, as appropriate, currently informed with respect to the activities of the Agency and the participation of the United States therein.

Sec. 4. The representatives provided for in section 2 hereof, when representing the United States in the organs of the Agency, shall, at all times, act in accordance with the instructions of the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the statute of the International Atomic Energy Agency.

Sec. 5. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the International Atomic Energy Agency as apportioned by the Agency in accordance with paragraph (D) of article XIV of the statute of the Agency, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof and of their appropriate staffs, including personal services without regard to the civil service laws and the Classification Act of 1949, as amended; travel

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[1] References in this subsection to sections of the Foreign Service Act of 1980 and to the Senior Foreign Service were inserted by sec. 2206(a)(7) of Public Law 94-465 (94 Stat. 2161), effective Feb. 15, 1981. These replaced a reference to secs. 411 and 412 of the Foreign Service Act of 1946.

[2] The references to the Foreign Service Act of 1980 and to the Senior Foreign Service were inserted by sec. 2206(a)(7) of Public Law 96-465 (94 Stat. 2161), effective Feb. 15, 1981.

[3] Public Law 89-348 (79 Stat. 1310, sec. 1(20), amended Public Law 85-177 by repealing the requirement of a report to the Congress by the President not less than once each year on the activities of the International Atomic Energy Agency and on the participation of the United States therein.

expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, as amended, and section 10 of the Act of March 3, 1933, as amended; salaries as authorized by the Foreign Service Act of 1980,[4] or as authorized by the Atomic Energy Act of 1954, as amended, and expenses and allowances of personnel and dependents as authorized by the Foreign Service Act of 1980; [4] services as authorized by sec. 15 of the Act of Aug. 2, 1946 (5 U.S.C. 55a); [5] translating and other services, by contract; hire of passenger motor vehicles and other local transportation; printing and binding without regard to section II of the Act of March 1, 1919 (44 U.S.C. 111); official functions and courtesies; such sums as may be necessary to defray the expenses of United States participation in the Preparatory Commission for the Agency, established pursuant to annex I of the statute of the Agency; and such other expenses as may be authorized by the Secretary of State.

Sec. 6. (a) [6] Notwithstanding any other provision of law, Executive order or regulation, a Federal employee who, with the approval of the Federal agency, or the head of the department by which he is employed, leaves his position to enter the employ of the Agency shall not be considered for the purposes of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life Insurance Act of 1954, as amended, as separated from his Federal position during such employment with the Agency but not to extend beyond the first three consecutive years of his entering the employ of the Agency: *Provided,* (1) That he shall pay to the Civil Service Commission [7] within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency, and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group Life Insurance Act of 1954, as amended, shall be made during the term of his employment with the International Atomic Energy Agency. If such employee, within three years from the date of his employment with the Agency, and within ninety days from the date he is separated without prejudice from the Agency, applies to be restored to his Federal position, he shall within thirty days of such application be restored to such position or to a position of like seniority, status and pay.

(b) Notwithstanding any other provision of law, Executive order or regulation, any Presidential appointee or elected officer who leaves his position to enter, or who within ninety days after the termination of his position enters, the employ of the Agency, shall

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[4] Reference to the Foreign Service Act of 1980 was inserted in lieu of a reference to the Foreign Service Act of 1946 by sec. 2206(a)(7) of Public Law 96-465 (94 Stat. 2162), effective Feb. 15, 1981.

[5] Public Law 89-554 (80 Stat. 416) codified sec. 15 of the Act of Aug. 2, 1946, as 5 U.S.C. 3109.

[6] Sec. 7 of Public Law 85-795 (72 Stat. 959), approved Aug. 28, 1958, repealed sec. 6(a), "except that it shall be considered to remain in effect with respect to any employee subject thereto who is serving as an employee of the International Atomic Energy Agency on the date of enactment of this Act and who does not make the election referred to in sec. 6 and for the purposes of any rights and benefits vested thereunder prior to such date."

[7] The Office of Personnel Management was substituted for the Civil Service Commission pursuant to sec. 102 of Reorganization Plan No. 2 of 1978.

be entitled to the coverage and benefits of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life Insurance Act of 1954, as amended, but not beyond the earlier of either the termination of his employment with the Agency or the expiration of three years from the date he entered employment with the Agency: *Provided,* (1) That he shall pay to the Civil Service Commission [7] within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the agency and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group Life Insurance Act of 1954, as amended, shall be made during the term of his employment with the Agency.

(c) The President is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section and to protect the retirement, insurance and such other civil service rights and privileges as the President may find appropriate.

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Sec. 8. In the event of an amendment to the Statute of the Agency being adopted in accordance with article XVIII–C of the Statute to which the Senate by formal vote shall refuse its advice and consent, upon notification by the Senate to the President of such refusal to advise and consent, all further authority under sections 2, 3, 4, and 5 of this Act, as amended, shall terminate: *Provided, however,* That the Secretary of State, under such regulations as the President shall promulgate, shall have the necessary authority to complete the prompt and orderly settlement of obligations and commitments to the Agency already incurred and pay salaries, allowances, travel expenses, and other expenses required for a prompt and orderly termination of United States participation in the Agency: *And provided further,* That the representative and the deputy representative of the United States to the Agency, and such other officers or employees representing the United States in the Agency, under such regulations as the President shall promulgate, shall retain their authority under this Act for such time as may be necessary to complete the settlement of matters arising out of the United States participation in the Agency.

f. Executive Orders Concerning International Atomic Energy Cooperation

(1) Authorization for the Communication of Restricted Data by the Department of State

Executive Order 11057, October 18, 1962, 27 F.R. 10289, 3 CFR, 1959–63 Comp., p. 648

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 et seq.), and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the Act (42 U.S.C. 2164(b)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission [1] and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended,

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided,* That no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures, adopted by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

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[1] Functions of the Atomic Energy Commission under this Executive order were modified so that such functions would be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, pursuant to sec. 4(a)(1) of Executive Order 12038, Feb. 3, 1978, 43 F.R. 4957.

(2) Authorization for the Communication of Restricted Data by the Central Intelligence Agency

Executive Order 10899, December 9, 1960, 25 F.R. 12729, 3 CFR, 1959–63 Comp., p. 427

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 et seq.), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsections 144a, b, or c of the Act (42 U.S.C. 2162 (a), (b), or (c)), such restricted data and data removed from the restricted data category under subsection 142d of the Act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission [1] and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841,

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided,* That no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

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[1] Functions of the Atomic Energy Commission under this Executive order were modified so that such functions would be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, pursuant to sec. 4(a)(1) of Executive Order 12038, Feb. 3, 1978, 43 F.R. 4957.

89-453 O - 89 - 11

(3) Providing for the Carrying Out of Certain Provisions of the Atomic Energy Act of 1954, as amended, Relating to International Cooperation

Executive Order 10841, September 30, 1959, 24 F.R. 7941, 3 CFR 1959–63 Comp., p. 375; as amended by Executive Order 10956, August 12, 1961, 26 F.R. 7315, 3 CFR 1959–63 Comp., p. 482; and by Executive Order 12608, September 9, 1987, 52 F.R. 34617

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), herein referred to as the Act, and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

Section 1. Whenever the President, pursuant to section 123 of the Act, has approved and authorized the execution of a proposed agreement providing for cooperation pursuant to section 91c, 144a, 144b, or 144c of the Act (42 U.S.C. 2121(c), 2164(a), 2164(b), 2164(c)), such approval and authorization by the President shall constitute his authorization to cooperate to the extent provided for in the agreement and in the manner provided for in section 91c, 144a, 144b, or 144c, as pertinent. In respect of sections 91c, 144b, and 144c, authorizations by the President to cooperate shall be subject to the requirements of section 123d of the Act and shall also be subjected to appropriate determinations made pursuant to section 2 of this order.

Sec. 2. (a) The Secretary of Defense and the Secretary of Energy [1] are hereby designated and empowered to exercise jointly, after consultation with executive agencies as may be appropriate, the following described authority without the approval, ratification, or other action of the President:

(1) The authority vested in the President by section 91c of the Act to determine that the proposed cooperation and each proposed transfer arrangement referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(2) The authority vested in the President by section 144b of the Act to determine that the proposed cooperation and the proposed communication of Restricted Data referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security: *Provided,* That each determination made under this paragraph shall be referred to the President and, unless disapproved by him, shall become effective fifteen days after such referral or at such later time as may be specified in the determination.[2]

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[1] The "Secretary of Energy" was inserted in lieu of "Atomic Energy Commission" by sec. 9 of Executive Order 12608, September 9, 1987, 52 F.R. 34617

[2] This provision was added by Executive Order 10956, Aug. 12, 1961, 26 F.R. 7315.

(3) The authority vested in the President by section 144c of the Act to determine that the proposed cooperation and the communication of the proposed Restricted Data referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(b) Whenever the Secretary of Defense and the Secretary of Energy [1] are unable to agree upon a joint determination under the provisions of subsection (a) of this section, the recommendations of each of them, together with the recommendations of other agencies concerned, shall be referred to the President, and the determination shall be made by the President.

Sec. 3. This order shall not be construed as delegating the function vested in the President by section 91c of the Act of approving programs proposed under that section.

Sec. 4. (a) The functions of negotiating and entering into international agreements under the Act shall be performed by or under the authority of the Secretary of State.

(b) International cooperation under the Act shall be subject to the responsibilities of the Secretary of State with respect to the foreign policy of the United States pertinent thereto.

2. Nuclear Non-Proliferation Act of 1978 and Related Materials

a. Nuclear Non-Proliferation Act of 1978

Partial text of Public Law 95-242 [H.R. 8638], 92 Stat. 120, approved March 10, 1978; as amended by Public Law 99-661 [National Defense Authorization Act for Fiscal Year 1987; S. 2638], 100 Stat. 3816, approved November 11, 1986.

AN ACT To provide for more efficient and effective control over the proliferation of nuclear explosive capability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Nuclear Non-Proliferation Act of 1978."

NOTE.—Sections of this Act which have been omitted amend the Atomic Energy Act of 1954. See the appropriate sections of the 1954 Act beginning on page 243 for the text of these omitted sections.

STATEMENT OF POLICY

Sec. 2.[1] The Congress finds and declares that the proliferation of nuclear explosive devices or of the direct capability to manufacture or otherwise acquire such devices poses a grave threat to the security interests of the United States and to continued international progress toward world peace and development. Recent events emphasize the urgency of this threat and the imperative need to increase the effectiveness of international safeguards and controls on peaceful nuclear activities to prevent proliferation. Accordingly, it is the policy of the United States to—

(a) actively pursue through international initiatives mechanisms for fuel supply assurances and the establishment of more effective international controls over the transfer and use of nuclear materials and equipment and nuclear technology for peaceful purposes in order to prevent proliferation, including the establishment of common international sanctions;

(b) take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies by establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses;

[1] 22 U.S.C. 3201.

(c) strongly encourage nations which have not ratified the Treaty on the Non-Proliferation of Nuclear Weapons to do so at the earliest possible date; [2] and

(d) cooperate with foreign nations in identifying and adapting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with the economic and material resources of those nations and environmental protection.

STATEMENT OF PURPOSE

Sec. 3.[3] It is the purpose of this Act to promote the policies set forth above by—

(a) establishing a more effective framework for international cooperation to meet the energy needs of all nations and to ensure that the worldwide development of peaceful nuclear activities and the export by any nation of nuclear materials and equipment and nuclear technology intended for use in peaceful nuclear activities do not contribute to proliferation;

(b) authorizing the United States to take such actions as are required to ensure that it will act reliably in meeting its commitment to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

(c) providing incentives to the other nations of the world to join in such international cooperative efforts and to ratify the Treaty; and

(d) ensuring effective controls by the United States over its exports of nuclear materials and equipment and of nuclear technology.

DEFINITIONS

Sec. 4.[4] (a) As used in this Act, the term—

(1) "Commission" means the Nuclear Regulatory Commission;

(2) "Director" means the Director of the Arms Control and Disarmament Agency;

(3) "IAEA" means International Atomic Energy Agency;

(4) "nuclear materials and equipment" means source material, special nuclear material, production facilities, utilization facilities, and components, items or substances determined to have significance for nuclear explosive purposes pursuant to subsection 109 b. of the 1954 Act;

(5) "physical security measures" means measures to reasonably ensure that source or special nuclear material will only be used for authorized purpose and to prevent theft and sabotage;

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[2] This policy was again reiterated by Congress in sec. 507 of the International Development Cooperation Act of 1979 (Public Law 96-53; 93 Stat. 378) (Legislation on Foreign Relations Through 1988, vol. I, page 444). Sec. 507(b), which was repealed in 1981, also called for a report (submitted to Congress on November 19, 1979) from the Secretary of State, on steps taken by the Department of State to encourage nations which are not parties to the treaty to become parties.

[3] 22 U.S.C. 3202.

[4] 22 U.S.C. 3203.

(6) "sensitive nuclear technology" means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the 1954 Act;

(7) "1954 Act" means the Atomic Energy Act of 1954, as amended; and

(8) "the Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons.[5]

(b) All other terms used in this Act not defined in this section shall have the meanings ascribed to them by the 1954 Act, the Energy Reorganization Act of 1974, and the Treaty.

TITLE I—UNITED STATES INITIATIVES TO PROVIDE ADEQUATE NUCLEAR FUEL SUPPLY

POLICY

Sec. 101.[6] The United States, as a matter of national policy, shall take such actions and institute such measures as may be necessary and feasible to assure other nations and groups of nations that may seek to utilize the benefits of atomic energy for peaceful purposes that it will provide a reliable supply of nuclear fuel to those nations and groups of nations which adhere to policies designed to prevent proliferation. Such nuclear fuel shall be provided under agreements entered into pursuant to section 161 of the 1954 Act or as otherwise authorized by law. The United States shall ensure that it will have available the capacity on a long-term basis to enter into new fuel supply commitments consistent with its nonproliferation policies and domestic energy needs. The Commission shall, on a timely basis, authorize the export of nuclear materials and equipment when all the applicable statutory requirements are met.

URANIUM ENRICHMENT CAPACITY

Sec. 102.[7] The Secretary of Energy is directed to initiate construction planning and design, construction, and operation activities for expansion of uranium enrichment capacity, as elsewhere provided by law. Further the Secretary as well as the Nuclear Regulatory Commission, the Secretary of State, and the Director of the Arms Control and Disarmament Agency are directed to establish and implement procedures which will ensure to the maximum extent feasible, consistent with this Act, orderly processing of subsequent arrangements and export licenses with minimum time delay.

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[5] See Legislation on Foreign Relations Through 1988, vol. V, sec. L, for text of treaty.
[6] 22 U.S.C. 3221.
[7] 22 U.S.C. 3222.

REPORT

Sec. 103. The President shall promptly undertake a study to determine the need for additional United States enrichment capacity to meet domestic and foreign needs and to promote United States nonproliferation objectives abroad. The President shall report to the Congress on the results of this study within twelve months after the date of enactment of this Act.

INTERNATIONAL UNDERTAKINGS

Sec. 104.[8] (a) Consistent with section 105 of this Act, the President shall institute prompt discussions with other nations and groups of nations, including both supplier and recipient nations, to develop international approaches for meeting future worldwide nuclear fuel needs. In particular, the President is authorized and urged to seek to negotiate as soon as practicable with nations possessing nuclear fuel production facilities or source material, and such other nations and groups of nations, such as the IAEA, as may be deemed appropriate, with a view toward the timely establishment of binding international undertakings providing for—

(1) the establishment of an international nuclear fuel authority (INFA) with responsibility for providing agreed upon fuel services and allocating agreed upon quantities of fuel resources to ensure fuel supply on reasonable terms in accordance with agreements between INFA and supplier and recipient nations;

(2) a set of conditions consistent with subsection (d) under which international fuel assurances under INFA auspices will be provided to recipient nations, including conditions which will ensure that the transferred materials will not be used for nuclear explosive devices;

(3) devising, consistent with the policy goals set forth in section 403 of this Act, feasible and environmentally sound approaches for the siting, development, and management under effective international auspices and inspection of facilities for the provision of nuclear fuel services, including the storage of special nuclear material;

(4) the establishment of repositories for the storage of spent nuclear reactor fuel under effective international auspices and inspection;

(5) the establishment of arrangements under which nations placing spent fuel in such repositories would receive appropriate compensation for the energy content of such spent fuel if recovery of such energy content is deemed necessary or desirable; and

(6) sanctions for violation of the provisions of or for abrogation of such binding international undertakings.

(b) The President shall submit to Congress not later than six months after the date of enactment of this Act proposals for initial fuel assurances, including creation of an interim stockpile of uranium enriched to less than 20 percent in the uranium isotope 235 (low-enriched uranium) to be available for transfer pursuant to a

[8] 22 U.S.C. 3223.

sales arrangement to nations which adhere to strict policies designed to prevent proliferation when and if necessary to ensure continuity of nuclear fuel supply to such nations. Such submission shall include proposals for the transfer of low-enriched uranium up to an amount sufficient to produce 100,000 MWe years of power from light water nuclear reactors, and shall also include proposals for seeking contributions from other supplier nations to such an interim stockpile pending the establishment of INFA.

(c) The President shall, in the report required by section 103, also address the desirability of and options for foreign participation, including investment, in new United States uranium enrichment facilities. This report shall also address the arrangements that would be required to implement such participation and the commitments that would be required as a condition of such participation. This report shall be accompanied by any proposed legislation to implement these arrangements.

(d) The fuel assurances contemplated by this section shall be for the benefit of nations that adhere to policies designated to prevent proliferation. In negotiating the binding international undertakings called for in this section, the President shall, in particular, seek to ensure that the benefits of such undertakings are available to non-nuclear-weapon states only if such states accept IAEA safeguards on all their peaceful nuclear activities, do not manufacture or otherwise acquire any nuclear explosive device, do not establish any new enrichment or reprocessing facilities under their de facto or de jure control, and place any such existing facilities under effective international auspices and inspection.

(e) The report required by section 601 shall include information on the progress made in any negotiations pursuant to this section.

(f)(1) The President may not enter into any binding international undertaking negotiated pursuant to subsection (a) which is not a treaty until such time as such proposed undertaking has been submitted to the Congress and has been approved by concurrent resolution.

(2) The proposals prepared pursuant to subsection (b) shall be submitted to the Congress as part of an annual authorization Act for the Department of Energy.

REEVALUATION OF NUCLEAR FUEL CYCLE

Sec. 105.[9] The President shall take immediate initiatives to invite all nuclear supplier and recipient nations to reevaluate all aspects of the nuclear fuel cycle, with emphasis on alternatives to an economy based on the separation of pure plutonium or the presence of high enriched uranium, methods to deal with spent fuel storage, and methods to improve the safeguards for existing nuclear technology. The President shall, in the first report required by section 601, detail the progress of such international reevaluation.

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[9] 22 U.S.C. 3224.

TITLE II—UNITED STATES INITIATIVES TO STRENGTHEN THE INTERNATIONAL SAFEGUARDS SYSTEM

POLICY

Sec. 201.[10] The United States is committed to continued strong support for the principles of the Treaty on the Non-Proliferation of Nuclear Weapons, to a strengthened and more effective International Atomic Energy Agency and to a comprehensive safeguards system administered by the Agency to deter proliferation. Accordingly, the United States shall seek to act with other nations to—

(a) continue to strengthen the safeguards program of the IAEA and, in order to implement this section, contribute funds, technical resources, and other support to assist the IAEA in effectively implementing safeguards;

(b) ensure that the IAEA has the resources to carry out the provisions of article XII of the Statute of the IAEA;

(c) improve the IAEA safeguards system (including accountability) to ensure—

(1) the timely detection of a possible diversion of sources of special nuclear materials which could be used for nuclear explosive devices;

(2) the timely dissemination of information regarding such diversion; and

(3) the timely implementation of internationally agreed procedures in the event of such diversion;

(d) ensure that the IAEA receives on a timely basis the data needed for it to administer an effective and comprehensive international safeguards program and that the IAEA provides timely notice to the world community of any evidence of a violation of any safeguards agreement to which it is a party; and

(e) encourage the IAEA, to the maximum degree consistent with the Statute, to provide nations which supply nuclear materials and equipment with the data needed to assure such nations of adherence to bilateral commitments applicable to such supply.

TRAINING PROGRAM

Sec. 202.[11] The Department of Energy, in consultation with the Commission, shall establish and operate a safeguards and physical security training program to be made available to persons from nations and groups of nations which have developed or acquired, or may be expected to develop or acquire, nuclear materials and equipment for use for peaceful purposes. Any such program shall include training in the most advanced safeguards and physical security techniques and technology, consistent with the national security interests of the United States.

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[10] 22 U.S.C. 3241.
[11] 22 U.S.C. 3242.

NEGOTIATIONS

Sec. 203.[12] The United States shall seek to negotiate with other nations and groups of nations to—

(1) adopt general principles and procedures, including common international sanctions, to be followed in the event that a nation violates any material obligation with respect to the peaceful use of nuclear materials and equipment or nuclear technology, or in the event that any nation violates the principles of the Treaty, including the detonation by a non-nuclear-weapon state of a nuclear explosive device; and

(2) establish international procedures to be followed in the event of diversion, theft, or sabotage of nuclear materials or sabotage of nuclear facilities, and for recovering nuclear materials that have been lost or stolen, or obtained or used by a nation or by any person or group in contravention of the principles of the Treaty.

TITLE III—EXPORT ORGANIZATION AND CRITERIA

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EXPORT LICENSING PROCEDURES

Sec. 304. (a) * * *[13]

(b)[14] Within one hundred and twenty days of the date of enactment of this Act, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act, including such public hearings and access to information as the Commission deems appropriate: *Provided,* That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further,* That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

(c)[14] The procedures to be established pursuant to subsection (b) shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding

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[12] 22 U.S.C. 3243.

[13] Subsec. (a) added a new sec. 126 to the 1954 Act regarding export licensing procedures. For text of sec. 126, see page 273.

[14] 42 U.S.C. 2155a.

section 189 a. of the 1954 Act, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

(d) [15] Within sixty days of the date of enactment of this Act, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, the Secretary of Defense, and the Director, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgment are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to in paragraph (3) of section 127 of the 1954 Act taking into consideration variations in risks to security as appropriate.

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COMPONENT AND OTHER PARTS OF FACILITIES

Sec. 309. (a) * * * [16]

(b) [17] The Commission, not later than one hundred and twenty days after the date of the enactment of this Act, shall publish regulations to implement the provisions of subsections b. and c. of section 109 of the 1954 Act. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, the Department of Commerce, and the Arms Control and Disarmament Agency.

(c) [17] The President, within not more than one hundred and twenty days after the date of enactment of this Act, shall publish procedures regarding the control by the Department of Commerce, over all export items, other than those licensed by the Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations, as required, by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

(d) The amendments to section 109 of the 1954 Act made by this section shall not affect the approval of exports contracted for prior to November 1, 1977, which are made within one year of the date of enactment of such amendments.

TITLE IV—NEGOTIATION OF FURTHER EXPORT CONTROLS

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ADDITIONAL REQUIREMENTS

Sec. 402. [18] (a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter ex-

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[15] 42 U.S.C. 2156a.

[16] Subsec. (a) amended sec. 109 of the 1954 Act. For text of sec. 109, see page 267.

[17] 42 U.S.C. 2139a. The procedures referred to in subsection (c) were issued on June 1, 1978. For text, see Legislation on Foreign Relations Through 1988, vol. V, section L.

[18] 42 U.S.C. 2153a. The procedures mentioned in the first proviso were issued June 1, 1978. For text, see Legislation on Foreign Relations Through 1988, vol. V, section L.

ported from the United States may be enriched after export without the prior approvals of the United States for such enrichment: *Provided,* That the procedures governing such approval shall be identical to those set forth for the approval of proposed subsequent arrangements under section 131 of the 1954 Act, and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: *And provided further,* That no source or special nuclear material shall be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after the date of enactment of this Act, entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.

(b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (except an agreement for cooperation pursuant to subsection 91 c., 144 b., or 144 c. of the 1954 Act) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term "major critical component" means any component part or group of component parts which the President determines to be essential to the operation of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

PEACEFUL NUCLEAR ACTIVITIES

Sec. 403.[19] The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

(a) No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that—

(1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosives devices for any purpose, except as permitted by Article V, the Treaty;

(2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under the control of any non-nuclear-weapon state;

[19] 42 U.S.C. 2153b.

(3) adequate physical security measure will be established and maintained by any nation or group of nations on all of its nuclear activities;

(4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and

(5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.

(b)(1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in paragraph aa. (2) of section 11 of the 1954 Act) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than the host country to sensitive nuclear technology associated with such facilities.

(2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.

(c) Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.

(d) Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

RENEGOTIATION OF AGREEMENTS FOR COOPERATION

Sec. 404.[20] (a) The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on the date of enactment of this Act, or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreements under the 1954 Act. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 127 of the 1954 Act with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 123 a. of the 1954 Act, the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in the 1954 Act shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on the date of enactment of this Act.

(b) The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 123 a. of the 1954 Act and the export policy goals set forth in section 401 to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies which are not already being applied as export criteria to be enacted as additional export criteria.

(c) If the President proposed enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.

(d) If the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of the United States non-proliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint

[20] 42 U.S.C. 2153c.

resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to subsection 130 b. through g. of the 1954 Act.

AUTHORITY TO CONTINUE AGREEMENTS

Sec. 405.[21] (a) The amendments to section 123 of the 1954 Act made by this Act shall not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to the date of enactment of this Act.

Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement for Cooperation.

REVIEW

Sec. 406.[22] No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in the 1954 Act.

PROTECTION OF THE ENVIRONMENT

Sec. 406.[23] The President shall endeavor to provide in any agreement entered into pursuant to section 123 of the 1954 Act for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

TITLE V—UNITED STATES ASSISTANCE TO DEVELOPING COUNTRIES

POLICY; REPORT

Sec. 501.[24] The United States shall endeavor to cooperate with other nations, international institutions, and private organizations in establishing programs to assist in the development of non-nuclear energy resources, to cooperate with both developing and industrialized nations in protecting the international environment from contamination arising from both nuclear and non-nuclear energy activities, and shall seek to cooperate with and aid developing countries in meeting their energy needs through the development of such resources and the application of non-nuclear technologies consistent with the economic factors, the material resources of those countries, and environmental protection. The United States

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[21] 42 U.S.C. 2153d.

[22] 42 U.S.C. 2160a.

[23] 42 U.S.C. 2153e. Sec. 1913 of Public Law 95-630 (92 Stat. 3727) provides: "Sec. 1913. No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled 'Protection of the Environment' which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities."

[24] 42 U.S.C. 3261.

shall additionally seek to encourage other industrialized nations and groups of nations to make commitments for similar cooperation and aid to developing countries. The President shall report annually to Congress on the level of other nations' and groups of nations' commitments under such program and the relation of any such commitments to United States efforts under this title. In cooperating with and providing such assistance to developing countries, the United States shall give priority to parties to the Treaty.

PROGRAMS

Sec. 502. (a) The United States shall initiate a program, consistent with the aims of section 501, to cooperate with developing countries for the purpose of—

(1) meeting the energy needs required for the development of such countries;

(2) reducing the dependence of such countries on petroleum fuels, with emphasis given to utilizing solar and other renewable energy resources; and

(3) expanding the energy alternatives to such countries.

(b) Such program shall include cooperation in evaluating the energy alternatives of developing countries, facilitating international trade in energy commodities, developing energy resources, and applying suitable energy technologies. The program shall include both general and country-specific energy assessments and cooperative projects in resource exploration and production, training, research and development.

(c) As an integral part of such program, the Department of Energy, under the general policy guidance of the Department of State and in cooperation with the Agency for International Development and other Federal agencies as appropriate, shall initiate, as soon as practicable, a program for the exchange of United States scientists, technicians, and energy experts with those of developing countries to implement the purposes of this section.

(d) For the purposes of carrying out this section, there is authorized to be appropriated such sums as are contained in annual authorization Acts for the Department of Energy, including such sums which have been authorized for such purposes under previous legislation.

(e) Under the direction of the President, the Secretary of State shall ensure the coordination of the activities authorized by this title with other related activities of the United States conducted abroad, including the programs authorized by sections 103(c), 106(a)(2), and 119 of the Foreign Assistance Act of 1961.[25]

REPORT

Sec. 503. Not later than twelve months after the date of enactment of this Act, the President shall report to the Congress on the feasibility of expanding the cooperative activities established pursuant to section 502(c) into an international cooperative effort to include a scientific peace corps designed to encourage large numbers

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[25] For text, see Legislation on Foreign Relations Through 1988, vol. I, pages 26 and 36. Sec. 119 of the FA Act, 1961 was repealed in 1980.

of technically trained volunteers to live and work in developing countries for varying periods of time for the purpose of engaging in projects to aid in meeting the energy needs of such countries through the search for and utilization of indigenous energy resources and the application of suitable technology, including the widespread utilization of renewable and unconventional energy technologies. Such report shall also include a discussion of other mechanisms to conduct a coordinated international effort to develop, demonstrate, and encourage the utilization of such technologies in developing countries.

TITLE VI—EXECUTIVE REPORTING

REPORTS OF THE PRESIDENT

Sec. 601.[26] (a) The President shall review all activities of Government departments and agencies relating to preventing proliferation and shall make a report to Congress in January of 1979 and annually in January of each year thereafter on the Government's efforts to prevent proliferation. This report shall include but not be limited to—

(1) a description of the progress made toward—

(A) negotiating the initiatives contemplated in sections 104 and 105 of this Act;

(B) negotiating the international arrangements or other mutual undertakings contemplated in section 403 of this Act;

(C) encouraging non-nuclear-weapon states that are not party to the Treaty to adhere to the Treaty or, pending such adherence, to enter into comparable agreements with respect to safeguards and to foreswear the development of any nuclear explosive devices, and discouraging nuclear exports to non-nuclear-weapon states which have not taken such steps;

(D) strengthening the safeguards of the IAEA as contemplated in section 201 of this Act; and

(E) renegotiating agreements for cooperation as contemplated in section 404(a) of this Act;

(2) an assessment of the impact of the progress described in paragraph (1) on the non-proliferation policy of the United States; an explanation of the precise reasons why progress has not been made on any particular point and recommendations with respect to appropriate measures to encourage progress; and a statement of what legislative modifications, if any, are necessary in his judgment to achieve the non-proliferation policy of the United States;

(3) a determination as to which non-nuclear-weapon states with which the United States has an agreement for cooperation in effect or under negotiation, if any, have—

(A) detonated a nuclear device; or

(B) refused to accept the safeguards of the IAEA on all of their peaceful nuclear activities; or

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[26] 22 U.S.C. 3281.

(C) refused to give specific assurances that they will not manufacture or otherwise acquire any nuclear explosive device; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices;

(4) an assessment of whether any of the policies set forth in this Act have, on balance, been counterproductive from the standpoint of preventing proliferation; and

(5) a description of the progress made toward establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses in order to enhance the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies.

(b) In the first report required by this section, the President shall analyze each civil agreement for cooperation negotiated pursuant to section 123 of the 1954 Act, and shall discuss the scope and adequacy of the requirements and obligations relating to safeguards and other controls therein.

ADDITIONAL REPORTS

Sec. 602.[27] (a) The annual reports to the Congress by the Commission and the Department of Energy which are otherwise required by law shall also include views and recommendations regarding the policies and actions of the United States to prevent proliferation which are the statutory responsibility of those agencies. The Department's report shall include a detailed analysis of the proliferation implications of advanced enrichment and reprocessing techniques, advanced reactors, and alternative nuclear fuel cycles. This part of the report shall include a comprehensive version which includes any relevant classified information and a summary unclassified version.

(b) The reporting requirements of this title are in addition to and not in lieu of any other reporting requirements under applicable law.

(c) The Department of State, the Department of Defense,[28] the Arms Control and Disarmament Agency, the Department of Commerce, the Department of Energy, and the Commission shall keep the Committees on Foreign Relations and Governmental Affairs of the Senate and the Committee on International Relations of the House of Representatives fully and currently informed with respect to their activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, and with respect to the current activities of foreign nations which are of significance from the proliferation standpoint.

(d) Any classified portions of the reports required by this Act shall be submitted to the Senate Foreign Relations Committee and the House International Relations Committee.

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[27] 22 U.S.C. 3282.

[28] The reference to the "Department of Defense" was added by Public Law 99-661 (100 Stat. 3816 at 4004).

(e) Three years after enactment of this Act, the Comptroller General shall complete a study and report to the Congress on the implementation and impact of this Act on the nuclear non-proliferation policies, purposes, and objectives of this Act. The Secretaries of State, Energy, Defense, and Commerce and the Commission and the Director shall cooperate with the Comptroller General in the conduct of the study. The report shall contain such recommendations as the Comptroller General deems necessary to support the nuclear non-proliferation policies, purposes, and objectives of this Act.

(f) [29](1) The Secretary of Defense shall have access, on a timely basis, to all information regarding nuclear proliferation matters which the Secretary of State or the Secretary of Energy has or is entitled to have. Such access shall include access to all communications, materials, documents, and records relating to nuclear proliferation matters.

(2) This subsection does not apply to any intradepartmental document of the Department of State or the Department of Energy, or any portion of such document, that is solely concerned with internal, confidential advice on policy concerning the conduct of interagency deliberations on nuclear proliferation matters.

SAVING CLAUSE

Sec. 603.[30] (a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to section 91 c., 144 b., or 144 c. of the 1954 Act or arrangements pursuant thereto as it was in effect immediately prior to the date of enactment of this Act.

(c) Except where otherwise provided, the provisions of this Act shall take effect immediately upon enactment regardless of any requirement for the promulgation of regulations to implement such provisions.

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[29] Subsec. (f) was added by sec. 1370 of Public Law 99-661 (100 Stat. 4004).

[30] 42 U.S.C. 2153f.

b. Functions Relating to Nuclear Non-Proliferation

Executive Order 12058, May 11, 1978, 43 F.R. 20947

By virtue of the authority vested in me by the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 120, 22 U.S.C. 3201) and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. Department of Energy. The following functions vested in the President by the Nuclear Non-Proliferation Act of 1978 (92 Stat. 120, 22 U.S.C. 3201), hereinafter referred to as the Act, and by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), hereinafter referred to as the 1954 Act, are delegated or assigned to the Secretary of Energy:

(a) That function vested by Section 402(b) of the Act (92 Stat. 145, 42 U.S.C. 2153a).

(b) Those functions vested by Sections 131a(2)(G), 131b(1), and 131f(2) of the 1954 Act (92 Stat. 127, 42 U.S.C. 2160).

(c) That function vested by Section 131f(1)(A)(ii) of the 1954 Act to the extent it relates to the preparation of a detailed generic plan.

Sec. 2. Department of State. The Secretary of State shall be responsible for performing the following functions vested in the President:

(a) Those functions vested by Sections 104(a), 104(d), 105, 403, 404, 407, and 501 of the Act (92 Stat. 122, 123, 146, 147, and 22 U.S.C. 3223(a), 3223(d), 3224, and 42 U.S.C. 2153b, 2153c, 2153e, and 22 U.S.C. 3261).

(b) That function vested by Section 128a(2) of the 1954 Act (92 Stat. 137, 42 U.S.C. 2157(a)(2)).

(c) That function vested by Section 601 of the Act to the extent it relates to the preparation of an annual report.

(d) The preparation of timely information and recommendations related to the President's functions vested by Sections 126, 128b, and 129 of the 1954 Act (92 Stat. 131, 137, and 138, 42 U.S.C. 2155, 2157, and 2158).

(e) That function vested by Section 131c of the 1954 Act (92 Stat. 129, 42 U.S.C. 2160(c)); except that, the Secretary shall not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President.

Sec. 3. Department of Commerce. The Secretary of Commerce shall be responsible for performing the function vested in the President by Section 309(c) of the Act (92 Stat. 141, 42 U.S.C. 2139a).

Sec. 4. Coordination. In performing the functions assigned to them by this Order, the Secretary of Energy and the Secretary of

State shall consult and coordinate their actions with each other and with the heads of other concerned agencies.

Sec. 5. General Provisions. (a) Executive Order No. 11902 of February 2, 1976, entitled "Procures for an Export Licensing Policy as to Nuclear Materials and Equipment," is revoked.

(b) The performance of functions under either the Act or the 1954 Act shall not be delayed pending the development of procedures, even though as many as 120 days are allowed for establishing them. Except where it would be inconsistent to do so, such functions shall be carried out in accordance with procedures similar to those in effect immediately prior to the effective date of the Act.

c. Export of Nuclear Material

(1) U.S. Exports of Low-Enriched Uranium Fuel

Public Law 96-280 [S.J. Res. 89], 94 Stat. 550, approved June 18, 1980

JOINT RESOLUTION Permitting the supply of additional low enriched uranium fuel under international agreements for cooperation in the civil uses of nuclear energy, and for other purposes.

Whereas the Nuclear Non-Proliferation Act of 1978 urges the United States to provide a reliable supply of nuclear fuel to those nations which adhere to policies designed to prevent the proliferation of nuclear weapons; and

Whereas the United States, in order to achieve the goals of that Act should be able to continue to supply low-enriched uranium fuel to nations that have entered into good faith negotiations as called for in section 404(a) of the Act; and

Whereas pending such negotiations, limitations now contained in certain agreements for cooperation on the amount of low-enriched uranium which may be supplied thereunder are insufficient to permit adequate assurance of supplies: Now, therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Limits contained in agreements for cooperation on the amount of low-enriched uranium which may be transferred by or exported from the United States pursuant thereto shall not be construed to preclude transfer or export of amounts of low-enriched uranium in excess of such limits to nations which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

Sec. 2. (a) The terms used in this joint resolution shall have the meanings ascribed to them by the Atomic Energy Act of 1954 and by the Nuclear Non-Proliferation Act of 1978.

(b) The term "low-enriched uranium" means uranium enriched to less than 20 per centum in the isotope 235.

(2) Export of Special Nuclear Material to India

Executive Order 12055, April 27, 1978, 43 F.R. 18157

By virtue of the authority vested in me as President by the Constitution of the United States of America and by Section 126b(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2155), as amended by Section 304(a) of the Nuclear Non-Proliferation Act of 1978 (Public Law 95–242, 92 Stat. 131), and having determined that withholding the export proposed pursuant to Nuclear Regulatory Commission export license application XSNM–1060 would be seriously prejudicial to the achievement of the United States non-proliferation objectives, that export to India is authorized; however, such export shall not occur for a period of 60 days as defined by Section 130g of the Atomic Energy Act of 1954, as amended.

(3) Export of Special Nuclear Material and Components to India

Executive Order 12218, June 19, 1980, 45 F.R. 41625

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126b. (2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(b)(2)), and having determined that withholding the exports proposed pursuant to Nuclear Regulatory Commission export license applications XSNM-1379, XSNM-1569, XCOM-0240, XCOM-0250, XCOM-0376, XCOM-0381 and XCOM-0395, would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security, those exports to India are authorized; however, such exports shall not occur for a period of 60 days as defined by Section 130 g. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2159(g)).

d. Department of Energy Act of 1978—Civilian Applications

Partial text of Public Law 95-238 [S. 1340], 92 Stat. 47 at 59 and 75, approved February 25, 1978

AN ACT To authorize appropriations to the Department of Energy, for energy research, development, and demonstration, and related programs in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Non-Nuclear Energy Research and Development Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Energy Act of 1978—Civilian Applications".

* * * * * * *

Sec. 203.[1] The Secretary of Energy, in cooperation with the Secretary of State, shall report to the Committees on Science and Technology and International Relations of the House of Representatives and the Committees on Energy and Natural Resources and Foreign Relations of the Senate, within six months after the date of the enactment of this Act, on the effects of the April 20, 1977, message from the President of the United States, "Establishing for the United States a Strong and Effective Nuclear Non-Proliferation Policy", on nuclear research and development cooperative agreements. This report shall include impacts of the message and related initiatives through the promulgation, repeal, or modification of Executive orders, Presidential proclamation, treaties, other international agreements, and other pertinent documents of the President, the Executive Office of the President, the administrative agencies, and the departments, on cooperation between the United States and any other nation in the research, development, demonstration, and commercialization of all nuclear fission and nuclear fusion technologies. After the initial report, the Administrator shall report to such Committees on each subsequent major related initiative.

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Sec. 208.[2] (a) The Secretary of Energy shall—

(1) * * *

(2) * * *

(3) initiate and conduct a study involving the prospects for applications of solar photovoltaic energy systems for power generation in foreign countries, particularly lesser developed countries, and the potential for the exportation of these energy systems. This study shall involve the cooperation of the Department of State and the Department of Commerce, as well as

[1] 22 U.S.C. 2429 note.
[2] 42 U.S.C. 5556a.

other Federal agencies which the Secretary of Energy deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of the enactment of this Act; and

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3. Delegating to the Secretary of State Certain Functions With Respect to the Negotiation of International Agreements Relating to the Enhancement of the Environment

Executive Order 11742, October 23, 1973; 38 F.R. 29457

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

4. Defense Production Act Amendments of 1975, As Amended

Partial text of Public Law 94–152 [S. 1537], 89 Stat. 810, approved December 16, 1975, as amended by Public Law 94–153 [H.R. 11027], 89 Stat. 822, approved December 16, 1975; and by Public Law 94–220 [H.J. Res. 784], 90 Stat. 195, approved February 7, 1976

AN ACT To amend the Defense Production Act of 1950, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Defense Production Act Amendments of 1975".

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Sec. 3. Section 708 of the Defense Production Act of 1950 [1] is amended to read as follows:

* * * * * * *

"Sec. 708A. (a) Except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"(b) As used in this section—

"(1) The term 'international energy supply emergency' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

"(2) The term 'international agreement' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974.[2]

"(3) The term 'Administrator' means the Administrator of the Federal Energy Administration.

"(4) The term 'petroleum products' means—

"(A) crude oil,

"(B) natural gas liquids and other liquids produced in association with crude oil or natural gas,

"(C) refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and

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[1] 50 U.S.C. App. 2158.

[2] For text, see Legislation on Foreign Relations Through 1988, vol. V, sec. L.

"(D) blending agents and additives used in conjunction with crude oil and refined petroleum products.

"(c) The requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements of plans of action.

"(d)(1) To achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act,[3] and section 17 of the Federal Energy Administration Act of 1974,[4] whether or not such Acts or any provisions thereof expire or terminate during the term of this Act or of such committees, and, in all cases, such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representative of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

"(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 522 (b)(1) and (b)(3) of title 5, United States Code.

"(3) For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act of 1974 [4] shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees (other than individuals employed pursuant to section 3109 of title 5, United States Code) established or utilized to advise the United States Government with respect to the development or implementation of any agreement or plan of action under the international agreement.

"(e) The Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of

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[3] 5 U.S.C. App. I.
[4] 15 U.S.C. 776.

the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

"(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

"(1)(A) Meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceding by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

"(B) No meetings may be held to develop or implement a voluntary agreement or plan of action under this section, unless a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent.

"(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings.

"(3) A verbatim transcript or, if keeping a verbatim transc pt is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement, or with respect to meetings held or communications made to develop a voluntary agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a

meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552 (b)(1) and (b)(3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

* * * * * * *

"(j)(1) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

"(A) such act or omission to act was taken in good faith by that person—

"(i) in the course of developing a voluntary agreement under this section; or

"(ii) to carry out a voluntary agreement under this section; and

"(B) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

"(2) In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

* * * * * * *

"(l)(1) The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

"(2) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

"(m) The authorities contained in this section with respect to the executive agreement, commonly known as the Agreement on an International Energy Program dated November 18, 1974, and referred to in this section as the international energy agreement, shall not be construed in any way as advice and consent, ratifica-

tion, endorsement, or any other form of congressional approval of the specific terms of such executive agreement or any related annex, protocol, amendment, modification, or other agreement which has been or may in the future be entered into.

* * * * * * *

"(o) If S. 622, Ninety-fourth Congress (the Energy Policy and Conservation Act) is enacted [5] then (effective on the effective date of the provisions of S. 622 which relate to international voluntary agreements to carry out the International Energy Program) this section and section 708 shall not be applicable to (1) any voluntary agreement or plan of action developed or implemented to carry out obligations of the United States under the international agreement, or (2) any voluntary agreement or plan of action which relates to petroleum products and which is developed, in whole or in part, to carry out the purposes of a treaty or executive agreement to which the United States is a party or to implement a program of international cooperation between the United States and one or more foreign countries."

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Sec. 9.[6] This Act and the amendments made by it shall take effect at the close of November 30, 1975, except that the amendment made by section 3 shall take effect upon the one hundred and twentieth day beginning after the date of its enactment.

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[5] S. 622 became Public Law 94-163 on Dec. 22, 1975. See page 347 for partial text.

[6] Public Law 94-220 amended sec. 9 which formerly read as follows:

"SEC. 9. This Act and the amendments made by it shall take effect on the one hundred and twentieth day beginning after the date of its enactment, except that the amendment made by section 2 shall take effect upon the close of November 30, 1975."

5. Energy Coordinating Committee

Executive Order 12083, September 27, 1978, 43 F.R. 44813

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the coordination of Federal energy policies, it is hereby ordered as follows:

1-1. Establishment of the Committee.

1-101. There is established an Energy Coordinating Committee, hereinafter referred to as the Committee.

1-102. The Committee shall be composed of the following, and such other members as the President may, from time to time, designate.

(a) The Secretary of Energy, who shall be the Chairman.
(b) The Secretary of State.
(c) The Secretary of the Treasury.
(d) The Secretary of Defense.
(e) The Attorney General.
(f) The Secretary of the Interior.
(g) The Secretary of Agriculture.
(h) The Secretary of Commerce.
(i) The Secretary of Labor.
(j) The Secretary of Health, Education, and Welfare.
(k) The Secretary of Housing and Urban Development.
(l) The Secretary of Transportation.
(m) The Special Representative for Trade Negotiations.
(n) The Director of the Office of Management and Budget.
(o) The Chairman of the Council of Economic Advisers.
(p) The Chairman of the Council on Environmental Quality.
(q) The Administrator of the Environmental Protection Agency.
(r) The Director of the Office of Science and Technology Policy.
(s) The Administrator of General Services.
(t) The Director of the National Science Foundation.
(u) The Assistant to the President for National Security Affairs.
(v) The Assistant to the President for Domestic Affairs and Policy.
(w) The Chairman of the Nuclear Regulatory Commission, who is invited to be a member.

1-2. Functions of the Committee.

1-201. The Committee shall ensure that there is communication and coordination among Executive agencies concerning energy policy and the management of energy resources.

1-202. The Committee shall, from time to time, develop and consider recommendations for improvements in the implementation of

89-453 0 - 89 - 12

Federal energy policies or the management of energy resources that involve two or more Executive agencies.

1-203. The functions of the Committee shall neither substitute for nor replace Executive Office of the President clearance, review, and decisionmaking procedures. Those procedures shall also be used for submitting to the President any of the conclusions or recommendations developed through the Committee's energy coordinating functions.

1-204. The Committee shall meet at the call of the Chairman.

1-3. Executive Council.

1-301. During periods when the Committee is not meeting, the functions of the Committee are delegated to an Executive Council. Meetings may be called by any regular member of the Council.

1-302. The Executive Council shall be composed of the following, and such others as may be appropriate due to the specific matters to be considered.

(a) The Chairman of the Committee, who shall be Chairman of the Executive Council.

(b) The Director of the Office of Management and Budget.

(c) The Chairman of the Council of Economic Advisers.

(d) The Assistant to the President for National Security Affairs.

(e) The Assistant to the President for Domestic Affairs and Policy.

1-4. Revocation of a Prior Order. Executive Order No. 11814, as amended which provided for an Energy Resource Council, is revoked.

6. Negotiations With Canada Concerning the Alaska Pipeline

Partial text of Public Law 93-153 [S. 1081], 87 Stat. 576 at 588, approved November 16, 1973

AN ACT To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE III—NEGOTIATIONS WITH CANADA

Sec. 301.[1] The President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine—

(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States, including the use of tankers by way of the Northwest Passage;

(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

(c) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory;

(d) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met;

(e) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit; and

(f) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional energy from other sources that would make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area.

The President shall report to the House and Senate Committees on Interior and Insular Affairs the actions taken, the progress achieved, the areas of disagreement, and the matters about which

[1] 43 U.S.C. 1651 note.

more information is needed, together with his recommendations for further action.

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7. Energy Policy and Conservation Act [1]

Partial text of Public Law 94-163 [S. 622], 89 Stat. 871, approved December 22, 1975, as amended by Public Law 95-619 [H.R. 5037], 92 Stat. 3206, approved November 9, 1978; by Public Law 96-30 [S. 1371], 93 Stat. 80, approved June 30, 1979; by Public Law 96-94 [H.R. 5506], 93 Stat. 720, approved October 31, 1979; by Public Law 96-102 [S. 1030], 93 Stat. 749, approved November 5, 1979; by Public Law 96-133 [S. 1871], 93 Stat. 1053, approved November 30, 1979; by Public Law 97-5 [H.R. 2166], 95 Stat. 7, approved March 13, 1981; by Public Law 97-50 [S. 1475], 95 Stat. 957, approved September 30, 1981; by Public Law 97-163 (S. 1937], 96 Stat. 24, approved April 1, 1982; by Public Law 97-190 [S. 2575], 96 Stat. 106, approved June 1, 1982; by Public Law 97-217 [S. 2651], 96 Stat. 196, approved July 19, 1982; by Public Law 97-229 [S. 2332], 96 Stat. 248, approved August 3, 1982; by Public Law 98-239 [H.R. 4194], 98 Stat. 93, approved March 20, 1984; by Public Law 98-370 [H.R. 3169], 98 Stat. 1211, approved July 18, 1984; by Public Law 98-454 [H.R. 5561], 98 Stat. 1732 at 1736, approved October 5, 1984; and by Public Law 99-58 [H.R. 1699], 99 Stat. 102, approved July 2, 1985

AN ACT To increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Policy and Conservation Act".

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STATEMENT OF PURPOSES

Sec. 2. The purposes of this Act are—

(1) to grant specific standby authority to the President, subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) to increase the supply of fossil fuels in the United States, through price incentives and production requirements;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources; and

[1] 42 U.S.C. 6201-6422.

(7) to provide a means for verification of energy data to assure the reliability of energy data.

* * * * * * *

DEFINITIONS

Sec. 3. As used in this Act:

(1) The term "Secretary" means the Secretary of Energy.[2]

(2) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company and (C) the government and any agency of the United States or any State or political subdivision thereof.

(3) The term "petroleum product" means crude oil residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

(4) The term "State" means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands,[3] or any territory or possession of the United States.

(5) The term "United States" when used in the geographical sense means all of the States and the Outer Continental Shelf.

(6) The term "Outer Continental Shelf" has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(7) The term "international energy program" means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including (A) the annex entitled "Emergency Reserves",[4] (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement.

(8) The term "severe energy supply interruption" means a national energy supply shortage which the President determines—

(A) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(B) may cause major adverse impact on national safety or the national economy; and

(C) results, or is likely to result, from an interruption in the supply of imported petroleum products, or from sabotage or an act of God.

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[2] The reference to the Secretary of Energy was substituted in lieu of a reference to the Administrator of the Federal Energy Administration by sec. 691(a) of Public Law 95-619 (92 Stat. 3288).

[3] Sec. 601(f) of Public Law 98-454 (98 Stat. 1736) added the reference to the Trust Territory of the Pacific Islands to the definition of "State".

[4] For text, see Legislation on Foreign Relations Through 1988, vol. V, sec. L.

DOMESTIC USE OF ENERGY SUPPLIES AND RELATED MATERIALS AND EQUIPMENT

Sec. 103. (a) The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this Act, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials of equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b)(1) The President shall exercise the authority provided for in subsection (a) to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and purposes of this Act.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country or destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this Act.

(c) In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [5] (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2)(C) of such Act), impose such restrictions as specified in any rule under subsection (a) on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

(d) Any finding by the President pursuant to subsection (a) or (b) and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency or transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e)(1) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may

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[5] 50 U.S.C. App. 2401 note. This reference to the 1979 act was changed from a reference to the Export Administration Act of 1969 (which expired on Sept. 30, 1979) by sec. 22(b) of Public Law 96-72 (93 Stat. 535).

waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c), the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this Act, to any violation of such restrictions.

(f) The President shall submit quarterly reports to the Congress concerning the administration of this section and any findings made pursuant to subsection (a) or (b).

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PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

INTERNATIONAL OIL ALLOCATION

Sec. 251. (a) The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2), such a rule shall remain in effect until amended or rescinded by the President.

(b)(1) No rule under subsection (a) may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

(2) No rule under subsection (b) may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c)(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives

specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973.[6]

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Neither section 103 of this Act nor section 28(u) of the Mineral Leasing Act of 1920 [7] shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

(e) [8] No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 252(l)(1), is in effect; and

(2) the allocation of available oil referred to in chapter III of the international energy program has been activated pursuant to chapter IV of such program.

INTERNATIONAL VOLUNTARY AGREEMENTS [9]

Sec. 252. (a) Effective 90 days after the date of enactment of this Act, the requirements of this section shall be the sole procedures applicable to—

(1) the development or carrying out of voluntary agreements and plans of action to implement the allocation and information provisions of the international energy program, and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) The Secretary,[10] with the approval of the Attorney General after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the allocation and information provisions of the international energy program.

(c) The standards and procedures prescribed under subsection (b) shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) of (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded

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[6] 15 U.S.C. 753

[7] 30 U.S.C. 185.

[8] Subsec. (e) was added by sec. 2(b)(1) of the Energy Emergency Preparedness Act of 1982 (Public Law 97-229; 96 Stat. 248).

[9] Sec. 3. of Public Law 96-133 (93 Stat. 1053) requires the Secretary of Energy to submit a report to the appropriate committees of Congress by Apr. 2, 1980, concerning the actions taken by the Secretary of Energy, Secretary of State, the Attorney General, and the Chairman of the Federal Trade Commission to carry out the provisions of this section. See page 372 for complete requirements of the report.

[10] The reference to the "Secretary" was substituted in lieu of a reference to the "Administrator" by sec. 691(a) of Public Law 95-619 (92 Stat. 3288).

by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreement or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary,[8] the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or the attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of action under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary [10] may impose.

(3) A full and complete record and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary,[10] and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5, United States Code; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on ground other than the grounds specified in section 552 (b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary,[7] and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to

be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.[11]

(d)(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary,[10] shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (j).

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary,[10] subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3). Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e).

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

(e)(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of voluntary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary,[10] shall promulgate rules con-

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[11] This sentence was added by sec. 2 of Public Law 96-133 (93 Stat. 1053).

cerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promulgated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act; and wherever any such law refers to "the purposes of this Act" or like terms, the reference shall be understood to include this section.

(f)(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products, provided that such actions were not taken for the purpose of injuring competition that—

(A) such actions were taken—

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this Act or subsequent to its expiration or repeal.

(h) Upon the expiration of the 90-day period which begins on the date of enactment of this Act, the provisions of sections 708 and 708A (other than 708A(o)) of the Defense Production Act of 1950 [12]

[12] 50 U.S.C. App. 2158a.

shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this Act or under the Emergency Petroleum Allocation Act of 1973.[13] For purposes of section 708A(o) of the Defense Production Act of 1950, the effective date of the provisions of this Act which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after the date of enactment of this Act.

(i) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every 6 months, a report on the impact on competition and on small business of actions authorized by this section.

(j) [14] In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(k) As used in this section and section 254:

(1) The term "international energy supply emergency" means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term "allocation and information provisions of the international energy program" means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such a program.

(l) [15] The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement chapters III, IV, and V of the international energy program.

(m)(1) [16] With respect to any plan of action approved by the Attorney General after the date of enactment of the Energy Policy and Conservation Amendments Act of 1985—

(A) the defenses under subsection (f) and (j) shall be applicable to Type 1 activities (as that term is defined in the interna-

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[13] 42 U.S.C. 751 note.

[14] Subsec. (j) previously terminated the authority granted by this section on June 30, 1985. It was repealed in its previous form by sec. 104(c) of Public Law 99-58, 99 Stat. 105.

[15] This subsec. was added by sec. 2(b)(2) of the Energy Emergency Preparedness Act of 1982 (Public Law 97-229; 96 Stat. 248).

[16] 42 U.S.C. 6272. Subsecs. (m) and (n) were added by sec. 105 of the Energy Policy and Conservation Amendments Act of 1985 (Public Law 99-58; 99 Stat. 105).

tional Energy Agency Emergency Management Manual, dated December 1982 only if—

(i) The Secretary has transmitted such plan of action to the Congress; and

(ii)(I) 90 calendar days of continuous session have elapsed since receipt by the Congress of such transmittal; or

(II) within 90 calendar days of continuous session after receipt of such transmittal, either House of the Congress has disapproved a joint resolution of disapproval pursuant to subsection (n); and

(B) such defenses shall not be applicable to Type 1 activities if there has been enacted, in accordance with subsection (n), a joint resolution of disapproval.

(2) The Secretary may withdraw the plan of action at any time prior to adoption of a joint resolution described in subsection (n)(3) by either House of Congress.

(3) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die at the end of the second session of Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(n) [16] (1)(A) The application of defenses under subsections (f) and (j) for Type 1 activities with respect to any plan of action transmitted to Congress as described in subsection (m)(1)(A)(i) shall be disapproved if a joint resolution of disapproval has been enacted into law during the 90-day period of continuous session after which such transmission was received by the Congress. For the purpose of this subsection, the term "joint resolution" means only a joint resolution of either House of the Congress as described in paragraph (3).

(B) After receipt by the Congress of such plan of action, a joint resolution of disapproval may be introduced in either House of the Congress. Upon introduction in the Senate, the joint resolution shall be referred in the Senate immediately to the Committee on Energy and Natural Resources of the Senate.

(2) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by paragraph (3); it supersedes outer rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(3) The joint resolution disapproving the transmission under subsection (m) shall read as follows after the resolving clause: "That the Congress of the United States disapproves the availability of the defenses pursuant to section 252(f) and (j) of the Energy Policy and Conservation Act with respect to Type 1 activities under the

plan of action submitted to the Congress by the Secretary of Energy on .", the blank space therein being filled with the date and year of receipt by the Congress of the plan of action transmitted as described in subsection (m).

(4)(A) If the Committee on Energy and Natural Resources of the Senate has not reported a joint resolution referred to it under this subsection at the end of 20 calendar days of continuous session after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other joint resolution which has been referred to the committee with respect to such plan of action.

(B) A motion to discharge shall be highly privileged (except that it may not be made after the Committee on Energy and Natural Resources has reported a joint resolution with respect to the plan of action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the joint resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other joint resolution with respect to the same transmission.

(5)(A) When the Committee on Energy and Natural Resources of the Senate has reported or has been discharged from further consideration of a joint resolution, it shall be in order at any time thereafter within the 90-day period following receipt by the Congress of the plan of action (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such joint resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider a vote by which the motion was agreed to or disagreed to.

(B) Debate on the joint resolution shall be limited to not more than 10 hours and final action on the joint resolution shall occur immediately following conclusion of such debate. A motion further to limit debate shall not be debatable. A motion to recommit such a joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such a joint resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or consideration of a joint resolution, shall be decided without debate.

(B) Appeals from the decision of the Chair relation to the application of rules of the Senate to the procedures relating to a joint resolution shall be decided without debate.

ADVISORY COMMITTEES

Sec. 253. (a) To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Administrator may provide for the establishment of such advisory

committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974 [17] (whether or not such Act or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(b) A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, United States Code, except that matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c).

(c) The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary [10] may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,[18]

(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974,[17]

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b);

If the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5, United States Code. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

EXCHANGE OF INFORMATION

Sec. 254. (a)(1) Except as provided in subsections (b) and (c), the Secretary,[10] after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

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[17] 15 U.S.C. 776.
[18] 5 U.S.C. App. 1.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552 (b)(9) or (b)(4) of title 5, United States Code, applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency if otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3)(A) Within 90 days after the date of enactment of this Act, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying paragraph (2)(B)(ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or by inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary [7] to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary [7] has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such infor-

mation and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) For the purposes of carrying out the obligations of the United States under this international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act and the Federal Energy Administration Act of 1974 respectfully, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974;

(2) section 14(b) of the Federal Energy Administration Act of 1974;

(3) section 12 of the Export Administration Act of 1979; [19]

(4) section 9 of title 13, United States Code;

(5) section 1 of the Act of January 27, 1938 (15 U.S.C. 176(a)); and

(6) section 1905 of title 18, United States Code.

RELATIONSHIP OF THIS TITLE TO THE INTERNATIONAL ENERGY AGREEMENT

Sec. 255. The purpose of the Congress in enacting this title is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this title may, to the extent authorized by this title, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this title shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

DOMESTIC RENEWABLE ENERGY INDUSTRY AND RELATED SERVICE INDUSTRIES

Sec. 256.[20] (a) It is the purpose of this section to implement the responsibilities of the United States under chapter VII of the international energy program with respect to development of alternative energy by facilitating the overall abilities of the domestic renewable energy industry and related service industries to create new markets.

(b)(1) Before the later of—

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[19] Amended by sec. 22(b) of Public Law 96-72 (93 Stat. 535); this was formerly a reference to sec. 7 of the Export Administration Act of 1969. For text, see Legislation on Foreign Relations Through 1988, vol. III, sec. J2.

[20] 42 U.S.C. 6276. Sec. 2 of Public Law 98-370 (98 Stat. 1211) added sec. 256.

(A) 6 months after the date of the enactment of this section, and

(B) May 31, 1985,

the Secretary of Commerce shall conduct an evaluation regarding the domestic renewable energy industry and related service industries and submit a report of his findings to the Congress.

(2) Such evaluation shall include—

(A) an assessment of the technical and commercial status of the domestic renewable energy industry and related service industries in domestic and foreign markets;

(B) an assessment of the Federal Government's activities affecting commerce in the domestic renewable energy industry and related service industries and in consolidating and coordinating such activities within the Federal Government; and

(C) an assessment of the aspects of the domestic renewable energy industry and related service industries in which improvements must be made to increase the international commercialization of such industry.

(c)(1) On the basis of the evaluation under subsection (b), the Secretary of Commerce shall, consistent with existing law, establish a program for enhancing commerce in renewable energy technologies and consolidating or coordinating existing activities for such purpose.

(2) Such program shall provide for—

(A) the broadening of the participation by the domestic renewable energy industry and related service industries in such activities;

(B) the promotion of the domestic renewable energy industry and related service industries on a worldwide basis;

(C) the participation by the Federal Government and the domestic renewable energy industry and related service industries in international standard-setting activities; and

(D) the establishment of an information program under which—

(i) technical information about the domestic renewable energy industry and related service industries shall be provided to appropriate public and private officials engaged in commerce, and

(ii) marketing information about export opportunities shall be available to the domestic renewable energy industry and related service industries.

(3) Necessary funds required for carrying out such program shall be requested in connection with fiscal years beginning after September 30, 1984.

(d) There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may

furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions.

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PART C—ENERGY EMERGENCY PREPAREDNESS

CONGRESSIONAL FINDINGS, POLICY, AND PURPOSE

SEC 271.[21] (a) FINDINGS.—The Congress finds that—

(1) a shortage of petroleum products caused by reductions in imports of petroleum products may occur at any time;

(2) such a shortage may be sufficiently large to cause severe economic dislocations and hardships, or constitute a serious threat to public health, safety, and welfare; and

(3) prior to the occurrence of such a shortage, the Federal Government has a responsibility to be prepared to mitigate the adverse impacts of such a shortage as a supplement to reliance on free market pricing and allocation of available petroleum product supplies.

(b) POLICY.—The Congress declares that it shall be the policy of the United States that the Federal Government shall be prepared prior to any shortage of petroleum products to respond to energy emergencies, pursuant to authorities under provisions of law other than this part, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum products on public health, safety, and welfare.

(PURPOSE.—The purpose of this part is to carry out the policy in subsection (b) by providing for the preparation of comprehensive energy emergency response procedures to be available for use by the President under authorities contained in any provision of law other than this part.)

PREPARATION FOR PETROLEUM SUPPLY INTERRUPTIONS

SEC. 272.[21] (a) DESCRIPTION OF AVAILABLE LEGAL AUTHORITIES.—(1) The President shall submit to the Congress no later than November 15, 1982, a memorandum of law which describes the nature and extent of the authorities available to the President under existing law to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States.

(2) The memorandum of law required by paragraph (1) shall be prepared by the Attorney General, in consultation with the Secretary of Energy.

(3) The memorandum of law submitted to the Congress pursuant to this subsection shall—

(A) include the following subjects—

(i) activities of the United States in support of the international energy program and the December 10, 1981, International Energy Agency agreement entitled "Decision

[21] Secs. 271 and 272 were added by sec. 3(a) of the Energy Emergency Preparedness Act of 1982 (Public Law 97-229; 96 Stat. 248).

on Preparation for Future Supply Disruptions" including—

(I) the National Emergency Sharing Organization;

(II) emergency sharing systems; and

(III) the supply right project;

(ii) activities of the United States pursuant to its energy emergency preparedness obligations to the North Atlantic Treaty Organization;

(iii) development and use of the Strategic Petroleum Reserve;

(iv) Government incentives to encourage private petroleum product stocks;

(v) reactivation of the following Executive Manpower Reserves:

(I) the Emergency Electric Power Reserve;

(II) the Emergency Petroleum and Gas Reserve; and

(III) the Emergency Solid Fuels Reserve;

(vi) energy emergency response management in coordination with State and local governments; and

(vii) emergency public information activities; and

(B) distinguish among—

(i) situations involving limited or general war, international tensions that threaten national security, and other Presidentially declared emergencies;

(ii) events resulting in activation of the international energy program; and

(iii) events or situations less severe than those described in clauses (i) and (ii).

(b) COMPREHENSIVE ENERGY EMERGENCY RESPONSES PROCEDURES.—(1) Not later than December 31, 1982, the President shall submit to the Congress comprehensive energy emergency response procedures for implementation, in whole or in part, of the authorities described under subsection (a).

(2) The comprehensive energy emergency response procedures shall—

(A) describe the various options the President would consider using to implement the authorities described in the memorandum of law submitted under subsection (a) to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States, including a description of the likely sequence in which such options would be taken;

(B) specify how appropriate governmental actions in response to international and domestic energy shortages would be selected and implemented under such options, particularly which official or governmental entity would select and implement such actions, and what procedures would be used in doing so; and

(C) recommend any additional statutory authority the President considers necessary to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States.

(c) DISCLAIMERS.—(1) Nothing in this part, or in the comprehensive energy emergency response procedures submitted pursuant to subsection (b), shall—

(A) limit the authority of the President under any provision of law to respond to a reduction in the amount of petroleum products available to the United States; or

(B) grant any authority to the President to respond to a reduction in the amount of petroleum products available to the United States.

(2) No State law or State program in effect on the date of the enactment of this part, or which may become effective thereafter, shall be construed to be superseded by any provision of this part.

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TITLE V—GENERAL PROVISIONS

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[Sections 505 and 506 amend The Energy Supply and Environmental Coordination Act of 1974]

PROHIBITED ACTS

Sec. 524. It shall be unlawful for any person—

(1) to violate any provision of title I or title II of this Act or this title (other than any provision of such titles which amend another law).

(2) to violate any rule, regulation, or order issued pursuant to any provision of section 383 of this Act; or

(3) to fail to comply with any provision prescribed in, or pursuant to, an energy conservation contingency plan which is in effect.

ENFORCEMENT

Sec. 525. (a) Whoever violates section 524 shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) Whoever willfully violates section 524 shall be fined not more than $10,000 for each violation.

(c) Any person who knowingly and willfully violates section 524 with respect to the sale, offer of sale, or distribution in commerce of a product or commodity after having been subjected to a civil penalty for a prior violation of section 524 with respect to the sale, offer of sale, or distribution in commerce of such product or commodity shall be fined not more than $50,000 or imprisoned not more than 6 months, or both.

(d) Whenever it appears to any officer or agency of the United States in whom is vested, or to whom is delegated, authority under this Act that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 524, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue man-

datory injunctions commanding any person to comply with any rule, regulation, or order described in section 524.

(e)(1) Any person suffering legal wrong because of any act or practice arising out of any violation of any provision of this Act described in paragraph (2), may bring an action in an appropriate district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

(2) The provisions of this Act referred to in paragraph (1) are as follows:

(A) Section 202 (relating to energy conservation plans).

(B) Section 251 (relating to international oil allocation).

(C) Section 252 (relating to international voluntary agreements).

(D) Section 253 (relating to advisory committees).

(E) Section 254 (relating to international exchange of information).

(F) Section 521 (relating to prohibition on certain actions).

EFFECT ON OTHER LAWS

Sec. 526. No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of title I or II of this Act (other than any provision of such title which amends another law) or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with such provision, rule, regulation, or order.

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EXPIRATION

Sec. 531.[22] * * * [Repealed—1985]

PART C—CONGRESSIONAL REVIEW

PROCEDURE FOR CONGRESSIONAL REVIEW OF PRESIDENTIAL REQUESTS TO IMPLEMENT CERTAIN AUTHORITIES

Sec. 551. (a) For purposes of this section, the term "energy action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have been trans-

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[22] Sec. 531 was repealed by sec. 104(c)(3) of the Energy Policy and Conservation Amendments Act of 1985 (Public Law 99-58; 99 Stat. 105). It formerly read as follows:

"Except as otherwise provided in title I or title II, all authority under any provision of title I or title II (other than a provision of either such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1985, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1985."

mitted on the first succeeding day on which both Houses are in session.

(c)(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(f)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not object to the energy action numbered ——— submitted to the Congress on ——————, 19——.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: "That the ——— does not favor the energy action numbered ——— transmitted to Congress on ——————, 19——.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same action; or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

EXPEDITED PROCEDURE FOR CONGRESSIONAL CONSIDERATION OF CERTAIN AUTHORITIES

Sec. 552. (a) Any contingency plan transmitted to the Congress pursuant to section 201(a)(1) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(b)(1) [23] No such energy conservation contingency plan may be considered approved for purposes of section 201(b) of this Act unless between the date of transmittal and the end of the first period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A).

(2) [23] (A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 201(d) only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the 30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) is passed by each House of the Congress and thereafter becomes law.

(c) For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the calendar-day period involved.[24]

(d)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but ap-

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[23] Sec. 103(b)(2)(A) of Public Law 96-102 (93 Stat. 753) added the paragraph designation "(1)", added the words "energy conservation" to par. (1), and inserted a new par. (2).

[24] The words "calendar-day period involved" were substituted in lieu of the words "60-calendar-day period" by sec. 103(b)(2)(B) of Public Law 96-102 (93 Stat. 753).

plicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this section; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2)(A) [25] For purposes of applying this section with respect to any energy conservation contingency plan,[25] the term "resolution" means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: "That the ———— approves the energy conservation,[26] contingency plan numbered ———— submitted to the Congress on ————, 19——.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation [26] contingency plan.

(B) [25] For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section 201(d)(2)(B), the term "resolution" means only a joint resolution described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress , 19 .", the blank spaces therein appropriately filled.

(ii) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress , 19 .", the blank spaces therein appropriately filled.

(3) A resolution once introduced with respect to a contingency plan shall immediately be referred to a committee (and all resolutions with respect to the same contingency plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan,[27] it shall

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[25] Sec. 103(b)(2)(C) of Public Law 96-102 (93 Stat. 753) added the subparagraph designation "(A)", amended the words to this point in subpar. (A), and added a new subpar. (B).

[26] The words "energy conservation" were added by sec. 105(a)(4) of Public Law 96-102 (93 Stat. 756).

[27] The words to this point beginning with "in the case of any energy * * *" were added by sec. 103(b)(2)(D) of Public Law 96-102 (93 Stat. 754).

be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A), an amendment [28] to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same contingency plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereunder in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B),[29] an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(7) [30] With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

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[28] Sec. 103(b)(2)(E) of Public Law 96-102 (93 Stat. 754) inserted the words to this point beginning with "Except to the extent provided " in lieu of "An amendment."

[29] The words to this point in this sentence were added by sec. 103(b)(2) (E) and (F) of Public Law 96-102 (93 Stat. 754).

[30] Par. (7) was added by sec. 103(b)(2)(G) of Public Law 96-102 (93 Stat. 754).

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing contingency plan, then the following procedure applies:

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with respect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

8. Extension of the International Energy Program

Partial text of Public Law 96–133 [S. 1871], 93 Stat. 1053, approved November 30, 1979

AN ACT To amend the Energy Policy and Conservation Act to extend certain authorities relating to the International Energy Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXTENSION

Section 1. * * * [1]

TRANSCRIPTS

Sec. 2. * * * [2]

REPORT

Sec. 3.[3] The Secretary of Energy, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Trade Commission, shall prepare and submit to the appropriate committees of Congress a report concerning the actions taken by them to carry out the provisions of section 252 of the Energy Policy and Conservation Act. Such report shall examine and discuss—

(1) the extent to which all, or part, of any meeting held in accordance with section 252(c) of such Act to carry out a voluntary agreement or to develop or carry out a plan of action should be open to interested persons in furtherance of the provisions of section 252(c)(1)(A) of such Act;

(2) the policies and procedures followed by the appropriate Federal agencies in reviewing and making public or withholding from the public all, or part, of any transcript of any meeting held to develop or carry out a voluntary agreement or plan of action under section 252 and in permitting persons, other than citizens of the United States, to review such transcripts to any public disclosure thereof;

(3) the extent to which the classification of all, or part, of such transcripts should be carried out by one agency;

(4) the adequacy of actions by the responsible Federal agencies in insuring that the standards and procedures required by section 252 are fully implemented and enforced, including the monitoring of the program concerning any anticompetitive ef-

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[1] Sec. 1 amends sec. 252(j) of the Energy Policy and Conservation Act (42 U.S.C. 6272(j)) by expanding the authority of that section until Mar. 15, 1981.

[2] Sec. 2 amends sec. 252(c)(4) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(4)) by adding language regarding access to transcripts required to be kept for any meeting.

[3] 42 U.S.C. 6272 note.

fects, and the number of personnel, and the amount of funds, assigned by each such agency to carry out such standards and procedures;

(5) the actions taken, or to be taken, to improve the reporting of energy supply data under the international energy program and to reconcile such reporting with similar reporting that is conducted by the Department of Energy;

(6) the actions taken, or planned, to improve the reporting required by section 252(i); and

(7) other actions under such section.

The Secretary of Energy shall transmit such report to such Committees within 120 days after the date of the enactment of this Act and shall make such report available to the public.

9. Energy Emergency Preparedness Act of 1982

Partial text of Public Law 97-229 [S. 2332], 96 Stat. 248, approved August 3, 1982

AN ACT To amend the Energy Policy and Conservation Act to extend certain authorities relating to the International Energy Program, to provide for the Nation's energy emergency preparedness, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.

This action may be cited as the "Energy Emergency Preparedness Act of 1982".

NOTE.—Sections 2–5 of this Act consist, for the most part, of amendments to the Energy Policy and Conservation Act. Portions of these amendments have been incorporated into the Act at the appropriate places. For text, see page 347.

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Sec. 6.[1] Reports to Congress on Petroleum Supply Interruptions.

(a) IMPACT ANALYSIS.—(1) Secretary of Energy shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during any substantial reduction in the amount of petroleum products available to the United States. In making such analysis, the Secretary of Energy may consult with the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and the heads of other appropriate Federal agencies. Such analysis shall—

(A) examine the equity and efficiency of such reliance,

(B) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

(C) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

(D) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the distribution of petroleum products.

[1] 42 U.S.C. 6245 note.

Such analysis shall include projections of the effect of the petroleum supply reduction on the price of motor gasoline, home heating, oil, and diesel fuel, and on Federal tax revenues, Federal royalty receipts, and State and local tax revenues.

(2) Within one year after the date of the enactment of this Act, the Secretary of Energy shall submit a report to the Congress and the President containing the analysis required by this subsection, including a detailed step-by-step description of the procedures by which the policies specified in paragraph (1)(C) would be accomplished in an emergency, along with such recommendations as the Secretary of Energy deems appropriate.

(b) STRATEGIC PETROLEUM RESERVE DRAWDOWN AND DISTRIBUTION REPORT.—The President shall prepare and transmit to the Congress, at the time he transmits the drawdown plan pursuant to section 4(c), a report [2] containing—

(1) a description of the foreseeable situations (including selective and general embargoes, sabotage, war, act of God, or accident) which could result in a severe energy supply interruption or obligations of the United States arising under the international energy program necessitating distributions from the Strategic Petroleum Reserve, and

(2) a description of the strategy or alternative strategies of distribution which could reasonably be used to respond to each situation described under paragraph (1), together with the theory and justification underlying each such strategy.

The description of each strategy under paragraph (2) shall include an explanation of the methods which would likely be used to determine the price and distribution of petroleum products from the Reserve in any such distribution, and an explanation of the disposition of revenues arising from sales of any such petroleum products under the strategy.

(c) REGIONAL RESERVE REPORT.—The President or his delegate shall submit to the Congress no later than December 31, 1982, a report regarding the actions taken to comply with the provisions of section 157 of the Energy Policy and Conservation Act (42 U.S.C. 6237). Such report shall include an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves, including—

(1) an assessment of the ability to transport petroleum products to refiners, distributors, and end users within the regions specified in section 157(a) of such Act;

(2) the comparative costs of creating and operating Regional Petroleum Reserves for such regions as compared to the costs of continuing current plans for the Strategic Petroleum Reserve; and

(3) a list of potential sites for Regional Petroleum Reserves.

(d) STRATEGIC ALCOHOL FUEL RESERVE REPORT.—The Secretary of Energy shall, in consultation with the Secretary of Agriculture, prepare and transmit to the Congress no later than December 31, 1982, a study of the potential for establishing a Strategic Alcohol Fuel Reserve.

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[2] Such report was due on Dec. 1, 1982.

(e) MEANING OF TERMS.—As used in this section, the terms "international emergency program", "petroleum product", "Reserve", "severe energy supply interruption", and "Strategic Petroleum Reserve" have the meanings given such terms in sections 3 and 152 of the Energy Policy and Conservation Act (42 U.S.C. 6202 and 6232).[3]

[3] See page 348 for text of sec. 3 of such Act.

10. Nuclear Waste Policy Act of 1982

Partial text of Public Law 97–425 [H.R. 3809], 96 Stat. 2201, approved January 7, 1983

AN ACT To provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TECHNICAL ASSISTANCE TO NON-NUCLEAR WEAPON STATES IN THE FIELD OF SPENT FUEL STORAGE AND DISPOSAL

Sec. 223.[1] (a) It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b)(1) Within 90 days of enactment of this Act, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United

[1] 42 U.S.C. 10203.

States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state power reactor operators.

(e) For the purposes of this subsection, the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C. 438).[2]

(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.

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[2] For text, see Legislation on Foreign Relations Through 1988, vol. V, sec. F.

11. International Environmental Protection Act of 1983

Partial text of Public Law 98-164 [H.R. 2915], 97 Stat. 1017 at 1045, approved November 22, 1983

AN ACT To authorize appropriations for fiscal years 1984 and 1985 for the Department of State, the United States Information Agency, the Board for International Broadcasting, the Inter-American Foundation, and the Asia Foundation, to establish the National Endowment for Democracy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE VII—INTERNATIONAL ENVIRONMENTAL PROTECTION

SHORT TITLE

Sec. 701. This title may be cited as the "International Environmental Protection Act of 1983".

ENDANGERED SPECIES

Sec. 702.[1] * * *

ENVIRONMENTAL EXCHANGES

Sec. 703. (a)[2] * * *

(b) Of the amount by which expenditures for the Fulbright Academic Exchange Programs, for the Humphrey Fellowship Program, and for the International Visitor Program for each of the fiscal years 1984 and 1985 exceeds the expenditures for these programs in fiscal year 1982, 5 percent shall be used to finance programs authorized by the amendment made by subsection (a) of this section.

INTERNATIONAL WILDLIFE RESOURCES CONSERVATION

Sec. 704. (a) The Secretary of State and the Secretary of the Interior, in consultation with the heads of other concerned Federal agencies, shall undertake a review of the effectiveness of existing United States international activities relating to the conservation of international wildlife resources and shall develop recommendations to substantially improve existing capabilities. On the basis of this review, the Secretary of State and the Secretary of the Interior shall, within six months after the date of enactment of this Act,

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[1] Sec. 702 amends the Foreign Assistance Act of 1961 by adding a new sec. 119 concerning endangered species.

[2] Subsec. (a) amends sec. 102(b) of the Mutual Educational and Cultural Exchange Act of 1961, authorizing the President to foster exchanges between the United States and other countries of experts in the fields of environmental science and environmental management.

transmit to the chairman of the Committee on Foreign Relations of the Senate and to the chairman of the Committee on Foreign Affairs of the House of Representatives a report—

(1) describing the programs of all Federal agencies concerned with international wildlife resources conservation programs;

(2) recommending an integrated United States plan of action to assist foreign governments and international organizations in conserving wildlife, taking into account the projections in the Global 2000 study;

(3) analyzing the extent to which the Department of State and other relevant Federal agencies are currently involved in—

(A) the establishment of effective liaison with international, national, and local governmental and nongovernmental agencies, organizations, and persons involved in or knowledgeable of wildlife resources conservation abroad;

(B) the provisions of expert international wildlife resources conservation staff assistance and advice to United States Embassies, Agency for International Development missions, United States overseas military installations, and other United States governmental or private interests;

(C) facilitating the provision of advice or assistance to governments, agencies, or organizations which wish to enhance their wildlife resources conservation capabilities abroad;

(D) the acquisition and dissemination of reliable data or information concerning—

(i) the conservation status of species of wild fauna and flora;

(ii) the conservation status of lands and waters upon which wild fauna and flora depend;

(iii) existing or proposed laws proclamations, statutes, orders, regulations, or policies which pertain to the taking, collecting, import, or export of wildlife resources, or to other aspects of international wildlife resources conservation;

(iv) the potential impact upon wildlife resources abroad of actions authorized, funded or carried out by the United States Government; and

(iv) opportunities to initiate or enhance the efficiency of international wildlife resources conservation by the transfer of United States expertise through technical assistance, training, exchange of publications, or other means;

(E) maintaining liaison, for the purposes of providing information needed to make sound conservation decisions, with persons responsible for implementing actions abroad which are authorized, funded, or carried out by Federal agencies or other persons under the jurisdiction of the United States; and

(F) the performance of any other activities which may be relevant to the United States obligations, authorities, or interests in the field of international wildlife resources conservation;

(4) recommending steps which could be taken to increase the capabilities of the Department of State and other relevant Federal agencies in carrying out the functions described in paragraph (3), including estimates of the costs of taking those steps and estimates of the personnel required to increase those capabilities; and

(5) analyzing the desirability of delineating geographic regions abroad (which would be known as "International Wildlife Resources Conservation Regions") and assigning qualified members of the Foreign Service to be responsible for wildlife resource conservation issues in those regions.

12. Global Climate Protection Act of 1987

Partial text of Public Law 100-204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989; H.R. 1777], 101 Stat. 1331, approved December 22, 1987

AN ACT To authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the U.S. Information Agency, the Voice of America, the Board for International Broadcasting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE XI—GLOBAL CLIMATE PROTECTION

SEC. 1101. SHORT TITLE.

This title may be cited as the "Global Climate Protection Act of 1987".

SEC. 1102. FINDINGS.

The Congress finds as follows:

(1) There exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect.

(2) By early in the next century, an increase in Earth temperature could—

(A) so alter global weather patterns as to have an effect on existing agricultural production and on the habitability of large portions of the Earth; and

(B) cause thermal expansion of the oceans and partial melting of the polar ice caps and glaciers, resulting in rising sea levels.

(3) Important research into the problem of climate change is now being conducted by various United States Government and international agencies, and the continuation and intensification of those efforts will be crucial to the development of an effective United States response.

(4) While the consequences of the greenhouse effect may not be fully manifest until the next century, ongoing pollution and deforestation may be contributing now to an irreversible process. Necessary actions must be identified and implemented in time to protect the climate.

(5) The global nature of this problem will require vigorous efforts to achieve international cooperation aimed at minimizing and responding to adverse climate change; such international cooperation will be greatly enhanced by United States leadership. A key step in international cooperation will be the meet-

ing of the Governing Council of the United Nations Environment Program, scheduled for June 1989, which will seek to determine a direction for worldwide efforts to control global climate change.

(6) Effective United States leadership in the international arena will depend upon a coordinated national policy.

SEC. 1103. MANDATE FOR ACTION ON THE GLOBAL CLIMATE.

(a) GOALS OF UNITED STATES POLICY.—United States policy should seek to—

(1) increase worldwide understanding of the greenhouse effect and its environmental and health consequences;

(2) foster cooperation among nations to develop more extensive and coordinated scientific research efforts with respect to the greenhouse effect;

(3) identify technologies and activities to limit mankind's adverse effect on the global climate by—

(A) slowing the rate of increase of concentrations of greenhouse gases in the atmosphere in the near term; and

(B) stabilizing or reducing atmospheric concentrations of greenhouse gases over the long term; and

(4) work toward multilateral agreements.

(b) FORMULATION OF UNITED STATES POLICY.—The President, through the Environmental Protection Agency, shall be responsible for developing and proposing to Congress a coordinated national policy on global climate change. Such policy formulation shall consider research findings of the Committee on Earth Sciences of the Federal Coordinating Council on Science and Engineering Technology, the National Academy of Sciences, the National Oceanic and Atmospheric Administration, the National Science Foundation, the National Aeronautic and Space Administration, the Department of Energy, the Environmental Protection Agency, and other organizations engaged in the conduct of scientific research.

(c) COORDINATION OF UNITED STATES POLICY IN THE INTERNATIONAL ARENA.—The Secretary of State shall be responsible to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations. In the formulation of these elements of United States policy, the Secretary of State shall, under the direction of the President, work jointly with the Administrator of the Environmental Protection Agency and other United States agencies concerned with environmental protection, consistent with applicable Federal law.

SEC. 1104. REPORT TO CONGRESS.

Not later than 24 months after the date of enactment of this Act, the Secretary of State and the Administrator of the Environmental Protection Agency shall jointly submit to all committees of jurisdiction in the Congress a report which shall include—

(1) a summary analysis of current international scientific understanding of the greenhouse effect, including its environmental and health consequences;

(2) an assessment of United States efforts to gain international cooperation in limiting global climate change; and

(3) a description of the strategy by which the United States intends to seek further international cooperation to limit global climate change.

SEC. 1105. INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION.

In order to focus international attention and concern on the problem of global warming, and to foster further work on multilateral treaties aimed at protecting the global climate, the Secretary of State shall undertake all necessary steps to promote, within the United Nations system, the early designation of an International Year of Global Climate Protection.

SEC. 1106. CLIMATE PROTECTION AND UNITED STATES-SOVIET RELATIONS.

In recognition of the respective leadership roles of the United States and the Soviet Union in the international arena, and of their joint role as the world's two major producers of atmospheric pollutants, the Congress urges that the President accord the problem of climate protection a high priority on the agenda of United States-Soviet relations.

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13. International Energy Emergency Authorities: Extension

Public Law 100-373 [S. 2203], 102 Stat. 878, approved July 19, 1988

AN ACT To extend the expiration date of title II of the Energy Policy and Conservation Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 281 of the Energy Policy and Conservation Act (42 U.S.C. 6285) is amended by striking "1988" both places it appears and inserting in lieu thereof "1990".

SEC. 2.[1] STUDY AND REPORT ON ENERGY POLICY COOPERATION BETWEEN UNITED STATES AND THE OTHER WESTERN HEMISPHERE COUNTRIES.

(a) STUDY.—The Secretary of Energy, in consultation with the Secretary of State and the Secretary of Commerce, shall conduct a study to determine how best to enhance cooperation between the United States and other countries of the Western Hemisphere with respect to energy policy including stable supplies of, and stable prices for, energy.

(b) REPORT.—On completion of the study described in subsection (a), the Secretary of Energy shall—

(1) report the results of such study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate;

(2) propose a comprehensive international energy policy for the United States designed to enhance cooperation between the United States and the other countries of the Western Hemisphere; and

(3) recommend such action as the Secretary deems necessary to establish and implement such policy.

[1] 42 U.S.C. 6272 note.

14. Temporary Emergency Wildfire Suppression Act

Public Law 100–428 [S. 2641], 102 Stat. 1615, approved September 9, 1988

AN ACT To authorize the Secretary of Agriculture and other agency heads to enter into agreements with foreign fire organizations for assistance in wildfire protection.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Temporary Emergency Wildfire Suppression Act".[1]

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "fire organization" means any governmental, public, or private entity having wildfire protection resources;

(2) the term "wildfire protection resources" means personnel, supplies, equipment, and other resources required for wildfire presuppression and suppression activities; and

(3) the term "wildfire" means any forest or range fire.

SEC. 3. IMPLEMENTATION.

(a)(1) The Secretary of Agriculture or the Secretary of the Interior, in consultation with the Secretary of State, may enter into a reciprocal agreement with any foreign fire organization for mutual aid in furnishing wildfire protection resources for lands and other properties for which such Secretary or organization normally provides wildfire protection.

(2) Any agreement entered into under this subsection—

(A) shall include a waiver by each party to the agreement of all claims against every other party to the agreement for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement;

(B) shall include a provision to allow the termination of such agreement by any party thereto after reasonable notice; and

(C) may provide for the reimbursement of any party thereto for all or any part of the costs incurred by such party in furnishing wildfire protection resources for, or on behalf of, any other party thereto.

(b) In the absence of any agreement authorized under subsection (a), the Secretary of Agriculture or the Secretary of the Interior may—

(1) furnish emergency wildfire protection resources to any foreign nation when the furnishing of such resources is determined by such Secretary to be in the best interest of the United States, and

(2) accept emergency wildfire protection resources from any foreign fire organization when the acceptance of such resources

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[1] 42 U.S.C. 1856a note.

is determined by such Secretary to be in the best interest of the United States.

(c) Nothwistanding the preceding provisions of this section, reimbursement may be provided for the costs incurred by the Government of Canada or a Canadian organization in furnishing wildfire protection resources to the government of the United States under—

(1) the memorandum entitled "Memorandum of Understanding Between the United States Department of Agriculture and Environment Canada on Cooperation in the Field of Forestry Related Programs" dated June 25, 1982; and

(2) the arrangement entitled "Arrangement in the Form of an Exchange of Notes Between the Government of Canada and the Government of the United States of America" dated May 4, 1982.

(d) Any service performed by any employee of the United States under an agreement or otherwise under this Act shall constitute service rendered in the line of duty in such employment. The performance of such service by any other individual shall not make such individual an employee of the United States.

SEC. 4. FUNDS.

Funds available to the Secretary of Agriculture or the Secretary of the Interior for wildfire protection resources in connection with activities under the jurisdiction of such Secretary may be used to carry out activities authorized under agreements or otherwise under this Act, or for reimbursements authorized under section 3(c): *Provided,* That no such funds may be expended for wildfire protection resources or personnel provided by a foreign fire organization unless the Secretary determines that no wildfire protection resources or personnel within the United States are reasonably available to provide wildfire protection.

SEC. 5. TERMINATION DATE.

The authority to enter into agreements under section 3(a), to furnish or accept emergency wildfire protection resources under section 3(b), or to incur obligations for reimbursement under section 3(c), shall terminate on December 31, 1988.

15. Rio Grande Pollution Correction Act of 1987

Public Law 100-465 [H.R. 2046], 102 Stat. 2272, approved October 3, 1988

AN ACT To authorize the Secretary of State to conclude agreements with the appropriate representative of the Government of Mexico to correct pollution of the Rio Grande.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rio Grande Pollution Correction Act of 1987".

SEC. 2.[1] AGREEMENTS TO CORRECT POLLUTION OF RIO GRANDE.

(a) IN GENERAL.—The Secretary of State, acting through the United State Commissioner, International Boundary and Water Commission, United States and Mexico (hereafter in this Act referred to as the "Commissioner"), is authorized to conclude agreements with the appropriate representative of the Ministry of Foreign Relations of Mexico for the purpose of correcting the international problem of pollution of the Rio Grande caused by discharge of raw and inadequately treated sewage and other wastes into such river from the border cities including but not limited to Ciudad Acuna, Nuevo Laredo, and Reynosa, Mexico, and Del Rio, Laredo, and Hidalgo, Texas.

(b) CONTENT OF AGREEMENTS.—Agreements concluded under subsection (a) should consist of recommendations to the Governments of the United States and Mexico of measures to protect the health and welfare of persons along the Rio Grande from the effects of pollution, including—

(1) facilities that should be constructed, operated, and maintained in each country;

(2) estimates of the cost of plans, construction, operation, and maintenance of the facilities referred to in paragraph (1);

(3) formulas for the initial division between the United States and Mexico of the cost of plans, constructions, operation, and maintenance of the facilities referred to in paragraph (1);

(4) a method for review and adjustment of the formulas referred to in paragraph (3) at intervals of five years which recognizes that such initial formulas should not be used as a precedent in their subsequent review and adjustment; and

(5) dates for the beginning and completion of construction of the facilities referred to in paragraph (1).

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[1] 22 U.S.C. 277g.

SEC. 3.[2] AUTHORITY OF SECRETARY OF STATE TO PLAN, CONSTRUCT, OPERATE, AND MAINTAIN FACILITIES.

The Secretary of State, acting through the Commissioner, is authorized to act jointly with the appropriate representative of the Government of Mexico and to—

(1) supervise the planning of, and

(2) supervise construction, operation, and maintenance of,

the facilities recommended in agreements concluded pursuant to section 2 and approved by the Governments of the United States and Mexico.

SEC. 4.[3] CONSULTATION WITH THE ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY AND OTHER AUTHORITIES

The Secretary of State shall consult with the Administrator of the Environmental Protection Agency and other concerned Federal, State, and local government officials in implementing this Act.

SEC. 5.[4] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary for the United States to fund its share of the cost of the plans, construction, operation, and maintenance of the facilities recommended in agreements concluded pursuant to section 2 and approved by the Governments of the United States and Mexico.

[2] 22 U.S.C. 277g-1.
[3] 22 U.S.C. 277g-2.
[4] 22 U.S.C. 277g-3.

16. African Elephant Conservation Act

Partial text of Public Law 100-478 [Endangered Species Act of 1973, Appropriations Authorization for Fiscal Years 1988-1992; H.R. 1467], 102 Stat. 2306 at 2315, approved October 7, 1988

AN ACT To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE II—AFRICAN ELEPHANT CONSERVATION

SEC. 2001.[1] SHORT TITLE.

This title may be cited as the "African Elephant Conservation Act."

SEC. 2002.[2] STATEMENT OF PURPOSE.

The purpose of this title is to perpetuate healthy populations of African elephants.

SEC. 2003.[3] FINDINGS.

The Congress finds the following:

(1) Elephant populations in Africa have declined at an alarming rate since the mid-1970's.

(2) The large illegal trade in African elephant ivory is the major cause of this decline, and threatens the continued existence of the African elephant.

(3) The African elephant is listed as threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its continued existence will be further jeopardized if this decline is not reversed.

(4) Because African elephant ivory is indistinguishable from Asian elephant ivory, there is a need to ensure that the trade in African elephant ivory does not further endanger the Asian elephant, which is listed as endangered under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and under Appendix I of CITES.

(5) In response to the significant illegal trade in African elephant ivory, the parties to CITES established the CITES Ivory Control System to curtail the illegal trade and to encourage African countries to manage, conserve, and protect their African elephant populations.

(6) The CITES Ivory Control System entered into force recently and should be allowed to continue in force for a reasona-

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[1] 16 U.S.C. 4201 note.
[2] 16 U.S.C. 4201 note.
[3] 16 U.S.C. 4202.

ble period of time to assess its effectiveness in curtailing the illegal trade in African elephant ivory.

(7) Although some African countries have effective African elephant conservation programs, many do not have sufficient resources to properly manage, conserve, and protect their elephant populations.

(8) The United States, as a party to CITES and a large market for worked ivory, shares responsibility for supporting and implementing measures to stop the illegal trade in African elephant.

(9) There is no evidence that sport hunting is part of the poaching that contributes to the illegal trade in African elephant ivory, and there is evidence that the proper utilization of well-managed elephant populations provides an important source of funding for African elephant conservation programs.

SEC. 2004.[4] STATEMENT OF POLICY.

It is the policy of the United States—

(1) to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat; and

(2) to provide financial resources for those programs.

PART I—AFRICAN ELEPHANT CONSERVATION ASSISTANCE

SEC. 2101.[5] PROVISION OF ASSISTANCE.

(a) IN GENERAL.—The Secretary may provide financial assistance under this part from the African Elephant Conservation Fund for approved projects for research, conservation, management, or protection of African elephants.

(b) PROJECT PROPOSAL.—Any African government agency responsible for African elephant conservation and protection, the CITES Secretariat, and any organization or individual with experience in African elephant conservation may submit to the Secretary a project proposal under this section. Each such proposal shall contain—

(1) the name of the person responsible for conducting the project;

(2) a succinct statement of the need for and purposes of the project;

(3) a description of the qualifications of the individuals who will be conducting the project;

(4) an estimate of the funds and time required to complete the project;

(5) evidence of support of the project by government entities of countries within which the project will be conducted, if such support may be important for the success of the project; and

(6) any other information the Secretary considers to be necessary or appropriate for evaluating the eligibility of the project for funding under this title.

(c) PROJECT REVIEW AND APPROVAL.—The Secretary shall review each project proposal to determine if it meets the criteria set forth

[4] 16 U.S.C. 4203.
[5] 16 U.S.C. 4211.

in subsection (d) and otherwise merits assistance under this title. Not later than six months after receiving a project proposal, and subject to the availability of funds, the Secretary shall approve or disapprove the proposal and provide written notification to the person who submitted the proposal and to each country within which the project is proposed to be conducted.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project under this section if the project will enhance programs for African elephant research, conservation, management, or protection by—

(1) developing in a usable form sound scientific information on African elephant habitat condition and carrying capacity, total elephant numbers and population trends, or annual reproduction and mortality; or

(2) assisting efforts—

(A) to ensure that any taking of African elephants in the country is effectively controlled and monitored;

(B) to implement conservation programs to provide for healthy, sustainable African populations; or

(C) to enhance compliance with the CITES Ivory Control System.

(e) PROJECT REPORTING.—Each entity that receives assistance under this section shall provide such periodic reports to the Director of the United States Fish and Wildlife Service as the Director considers relevant and appropriate. Each report shall include all information requested by the Director for evaluating the progress and success of the project.

SEC. 2102.[6] AFRICAN ELEPHANT CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the "African Elephant Conservation Fund," which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

(b) DEPOSITS INTO FUND.—The Secretary of the Treasury shall deposit into the Fund—

(1) subject to appropriations, all amounts received by the United States in the form of penalties under section 2204 which are not used to pay rewards under section 2205;

(2) amounts received by the Secretary of the Interior in the form of donations under subsection (d); and

(3) other amounts appropriated to the Fund to carry out this part.

(c) USE.—

(1) IN GENERAL.—Subject to paragraph (2), amounts in the Fund may be used by the Secretary, without further appropriation, to provide assistance under this part.

(2) ADMINISTRATION.—Not more than three percent of amounts appropriated to the Fund for a fiscal year may be used by the Secretary to administer the fund for that fiscal year.

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[6] 16 U.S.C. 4212.

(d) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations of funds to provide assistance under this part. Amounts received by the Secretary in the form of such donations shall be transferred by the Secretary to the Secretary of the Treasury for deposit into the ?Fund.

SEC. 2103. ANNUAL REPORTS.

The Secretary shall submit an annual report to the Congress not later than January 31 of each year regarding the Fund and the status of the African elephant. Each such report shall include with respect to the year for which the report is submitted a description of—

(1) the total amounts deposited into and expended from the Fund;

(2) the costs associated with the administration of the Fund;

(3) a summary of the projects for which the Secretary has provided assistance under this part and an evaluation of those projects; and

(4) an evaluation of African elephant populations and whether the CITES Ivory Control System is functioning effectively to control the illegal trade in African elephant ivory.

PART II—MORATORIA AND PROHIBITED ACTS

SEC. 2201.[7] REVIEW OF AFRICAN ELEPHANT CONSERVATION PROGRAMS.

(a) IN GENERAL.—Within one month after the date of the enactment of this title, the Secretary shall issue a call for information on the African elephant conservation program of each ivory producing country by—

(1) publishing a notice in the Federal Register requesting submission of such information to the Secretary by all interested parties; and

(2) submitting a written request for such information through the Secretary of State to each ivory producing country.

(b) REVIEW AND DETERMINATION.—

(1) IN GENERAL.—The Secretary shall review the African elephant conservation program of each ivory producing country and, not later than one year after the date of the enactment of this title, shall issue and publish in the Federal Register a determination of whether or not the country meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

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[7] 16 U.S.C. 4221.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

(2) DELAY IN ISSUING DETERMINATION.—If the Secretary finds within one year after the date of the enactment of this title that there is insufficient information upon which to make the determination under paragraph (1), the Secretary may delay issuing the determination until no later than December 31, 1989. The Secretary shall issue and publish in the Federal Register at the time of the finding a statement explaining the reasons for any such delay.

SEC. 2202.[8] MORATORIA.

(a) IVORY PRODUCING COUNTRIES.—

(1) IN GENERAL.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an ivory producing country immediately upon making a determination that the country does not meet all the criteria set forth in section 2201(b)(1).

(2) LATER ESTABLISHMENT.—With regard to any ivory producing country for which the Secretary has insufficient information to make a determination pursuant to section 2201(b), the Secretary shall establish a moratorium on the importation of raw and worked ivory from such country not later than January 1, 1990, unless, based on new information, the Secretary concludes before that date that the country meets all of the criteria set forth in section 22019(b)(1).

(b) INTERMEDIARY COUNTRIES.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an intermediary country immediately upon making a determination that the country—

(1) is not a party to CITES;

(2) does not adhere to the CITES Ivory Control System;

(3) imports raw ivory from a country that is not an ivory producing country;

(4) imports raw or worked ivory from a country that is not a party to CITES;

(5) imports raw or worked ivory that originates in an ivory producing country in violation of the laws of that ivory producing country;

(6) substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this title during the first three months of that moratorium; or

(7) imports raw or worked ivory from a country that is subject to a moratorium under this title after the first three months of that moratorium, unless the ivory is imported by

[8] 16 U.S.C. 4222.

vessel during the first six months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium.

(c) SUSPENSION OF MORATORIUM.—The Secretary shall suspend a moratorium established under this section if, after notice and public comment, the Secretary determines that the reasons for establishing the moratorium no longer exist.

(d) PETITION.—

(1) IN GENERAL.—Any person may at any time submit a petition in writing requesting that the Secretary establish or suspend a moratorium under this section. Such a petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(2) CONSIDERATION AND RULING.—The Secretary shall publish a notice of receipt of a petition under this subsection in the Federal Register and shall provide an opportunity for the public to comment on the petition. The Secretary shall rule on such petition not later than 90 days after the close of the public comment period.

(e) SPORT-HUNTED TROPHIES.—Individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota. The Secretary shall not establish any moratorium under this section, pursuant to a petition or otherwise, which prohibits the importation into the United States of sport-hunted trophies from elephants that are legally taken by the importer or the importer's principal in an ivory producing country that has submitted an ivory quota.

(f) CONFISCATED IVORY.—Trade in raw or worked ivory that is confiscated by an ivory producing country or an intermediary country and is disposed of pursuant to the CITES Ivory Control System shall not be the sole cause for the establishment of a moratorium under this part if all proceeds from the disposal of the confiscated ivory are used solely to enhance wildlife conservation programs or conservation purposes of CITES. With respect to any country that was not a party to CITES at the time of such confiscation, this subsection shall not apply until such country develops appropriate measures to assure that persons with a history of illegal dealings in ivory shall not benefit from the disposal of confiscated ivory.

SEC. 2203.[9] PROHIBITED ACTS.

Except as provided in section 2202(e), it is unlawful for any person—

(1) to import raw ivory from any country than an ivory producing country;

(2) to export raw ivory from the United States;

(3) to import raw or worked ivory that was exported from an ivory producing country in violation of that country's laws or of the CITES Ivory Control System;

(4) to import worked ivory, other than personal effects, from any country unless that country has certified that such ivory was derived from legal sources; or

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[9] 16 U.S.C. 4223.

(5) to import raw or worked ivory from a country for which a moratorium is in effect under section 2202.

SEC. 2204.[10] PENALTIES AND ENFORCEMENT.

(a) CRIMINAL VIOLATIONS.—Whoever knowingly violates section 2203 shall, upon conviction, be fined under title 18, United States Code, or imprisoned for not more than one year, or both.

(b) CIVIL VIOLATIONS.—Whoever violates section 2203 may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation.

(c) PROCEDURES FOR ASSESSMENT OF CIVIL PENALTY.—Proceedings for the assessment of a civil penalty under this section shall be conducted in accordance with the procedures provided for in section 11(a) of the Endangered Species Act of 1973 (16 U.S.C. 1540(a)).

(d) USE OF PENALTIES.—Subject to appropriations, penalties collected under this section may be used by the Secretary of the Treasury to pay rewards under section 2205 and, to the extent not used to pay such rewards, shall be deposited by the Secretary of the Treasury into the Fund.

(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this part in the same manner such Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)). Section 11(c) of the Endangered Species Act of 1973 (16 U.S.C. 1540(c)) shall apply to actions arising under this part.

SEC. 2205.[11] REWARDS.

(a) IN GENERAL.—Upon the recommendation of the Secretary, the Secretary of the Treasury may pay a reward to any person who furnishes information which leads to a civil penalty or a criminal conviction under this title.

(b) AMOUNT.—The amount of a reward under this section shall be equal to not more than one-half of any criminal or civil penalty or fine with respect to which the reward is paid, or $25,000, whichever is less.

(c) LIMITATION ON ELIGIBILITY.—An officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his or her official duties shall not be eligible for a reward under this section.

PART III—MISCELLANEOUS

SEC. 2301. PERMISSION TO IMPORT OR EXPORT AFRICAN ELEPHANT IVORY.[12]

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SEC. 2302.[13] RELATIONSHIP TO ENDANGERED SPECIES ACT OF 1973.

The authority of the Secretary under this title is in addition to and shall not affect the authority of the Secretary under the En-

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[10] 16 U.S.C. 4224.
[11] 16 U.S.C. 4225.
[12] Sec. 2301 amends sec. 9(d) of the Endangered Species Act of 1973 (16 U.S.C. 1538(d). See page 203 for text of amendment.
[13] 16 U.S.C. 4241.

dangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or diminish the Secretary's authority under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

SEC. 2303. CERTIFICATION UNDER PELLY AMENDMENT.

If the Secretary finds in administering this title that a country does not adhere to the CITES Ivory Control System, that country is deemed, for purposes of section 8(a)(2) of the Act of August 27, 1954 (22 U.S.C. 1978), to be diminishing the effectiveness of an international program for endangered or threatened species.

SEC. 2304.[14] EFFECTIVENESS OF CITES

Within 3 months after the completion of the 8th Conference of the Parties to CITES, the Secretary shall determine whether this title, together with the CITES Ivory Control System, has substantially stopped the importation of illegally harvested ivory into the United States. If the Secretary determines that the importation of illegally harvested ivory has not been substantially stopped, the Secretary shall recommend to the Congress amendments to this title or other actions that may be necessary to achieve the purposes of this title, including the establishment of a complete moratorium on the importation of elephant ivory into the United States.

SEC. 2305.[15] DEFINITIONS.

In this title—

(1) the term "African elephant" means any animal of the species loxodonta africana;

(2) the term "CITES" means the Convention on the International Trade in Endangered Species of Wild Fauna and Flora;

(3) the term "CITES Ivory Control System" means the ivory quota and marking system established by CITES to curtail illegal trade in African elephant ivory;

(4) the term "Fund" means the African Elephant Conservation Fund established by section 2102;

(5) the terms "import" and "importation" have the meanings such terms have in the Endangered Species Act of 1973

(16 U.S.C. 1531 et seq.);

(6) the term "intermediary country" means a country that exports raw or worked ivory that does not originate in that country;

(7) the term "ivory producing country" means any African country within which is located any part of the range of a population of African elephants;

(8) the term "ivory quota" means a quota submitted by an ivory producing country to the CITES Secretariat in accordance with the CITES Ivory Control System;

(9) the term "personal effects" means articles which are not intended for sale and are part of a shipment of the household effects of a person who is moving his or her residence to or from the United States, or are included in personal accompanying baggage;

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[14] 16 U.S.C. 4243.
[15] 16 U.S.C. 4244.

(10) the term "raw ivory" means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved;

(11) the term "Secretary" means the Secretary of the Interior;

(12) the term "United States" means the fifty States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(13) the term "worked ivory" means any African elephant tusk, and any piece thereof, which is not raw ivory.

SEC. 2306.[16] AUTHORIZATION OF APPROPRIATIONS.

There are authorized by be appropriated to the Fund and to the Secretary a total of not to exceed $5,000,000 for each of fiscal years 1989, 1990, 1991, 1992, and 1993 to carry out this title, to remain available until expended.

[16] 16 U.S.C. 4245.

M. AVIATION, SPACE, AND INTERNATIONAL SCIENTIFIC COOPERATION

CONTENTS

	Page
1. Antihijacking measures	401
a. Antihijacking Act of 1974 (Public Law 93-366) (partial text)	401
b. Suspension of Foreign Air Transportation to Lebanon by U.S. Air Carriers and of Foreign Air Transportation by Lebanese Carriers. (Presidential Determination 85-14)	407
2. International Cooperation in Scientific Research	408
a. National Science Foundation Act of 1950, as amended (Public Law 81-507) (partial text)	408
b. National Aeronautics and Space Act of 1958 (Public Law 85-568) (partial text)	409
c. National Aeronautics and Space Administration Authorization Act, 1976 (Public Law 94-39) (partial text)	410
d. National Aeronautics and Space Administration Authorization Act of 1988 (Public Law 100-147) (partial text)	412
e. National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (Public Law 100-685) (partial text)	413
f. Cooperative East-West Ventures in Space (Public Law 98-562)	416
3. Arctic Research	417
a. Arctic Research and Policy Act of 1984 (title I of Public Law 98-373)	417
b. Arctic Research Commission (Executive Order 12501)	425

1. Antihijacking Measures

a. Antihijacking Act of 1974

Title I of Public Law 93-366 [S. 39], 88 Stat. 409, approved August 5, 1974

AN ACT To amend the Federal Aviation Act of 1958 to implement the Convention for the Suppression of Unlawful Seizure of Aircraft; to provide a more effective program to prevent aircraft piracy; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ANTIHIJACKING ACT OF 1974

Sec. 101. This title may be cited as the "Antihijacking Act of 1974".

Sec. 102. Section 101(32) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(32)), relating to the definition of the term "special aircraft jurisdiction of the United States", is amended to read as follows:

"(32) [1] The term 'special aircraft jurisdiction of the United States' includes—

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States—

"(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States;

"(ii) having 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft,[2] committed abroad, if that aircraft lands in the United States with the alleged still aboard; or

"(iii) regarding which an offense as defined in subsection (d) or (e) or article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, September 23, 1971) is committed if the aircraft lands in the United States with an alleged offender still on board; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment

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[1] This paragraph has been renumbered on several occasions and is now paragraph (38) (49 U.S.C. 38(d)).

[2] 22 UST 1641; TIAS 7192. See Legislation on Foreign Relations Through 1988, vol. IV, sec. M, for text.

when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.".

Sec. 103. (a) Paragraph (2) of subsection (i) of section 902 of such Act (49 U.S.C. 1472), relating to the definition of the term "aircraft piracy", is amended by striking out "threat of force or violence and" and inserting in lieu thereof "threat of force or violence, or by any other form of intimidation, and".

(b) Section 902 of such Act is further amended by redesignating subsections (n) and (o) as subsections (o) and (p), respectively, and by inserting immediately after subsection (m) the following new subsection:

"AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

"(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft,[2] and is afterward found in the United States shall be punished—

"(A) by imprisonment for not less than 20 years; or

"(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

"(2) A person commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he—

"(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of that aircraft, or attempts to perform any such act; or

"(B) is an accomplice of a person who performs or attempts to perform any such act.

"(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

"(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard.".

(c) Subsection (o) of such section 902, as so redesignated by subsection (b) of this section, is amended by striking out "subsections (i) through (m)" and inserting in lieu thereof "subsections (i) through (n)".

Sec. 104. (a) Section 902(i)(1) is [sic] the Federal Aviation Act of 1958 (49 U.S.C. 1472(i)(1)) is amended to read as follows:

"(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished—

"(A) by imprisonment for not less than 20 years; or

"(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.".

(b) Section 902(i) of such Act is further amended by adding at the end thereof the following new paragraph:

"(3) An attempt to commit aircraft piracy shall be within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed.".

Sec. 105. Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), relating to venue and prosecution of offenses, is amended by adding at the end thereof the following new subsection:

"PROCEDURE IN RESPECT OF PENALTY FOR AIRCRAFT PIRACY

"(c)(1) A person shall be subjected to the penalty of death for any offense prohibited by section 902(i) or 902(n) of this Act only if a hearing is held in accordance with this subsection.

"(2) When a defendant is found guilty of or pleads guilty to an offense under section 902(i) or 902(n) of this Act for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in paragraphs (6) and (7), for the purpose of determining the sentence to be imposed. The hearing shall not be held if the Government stipulates that none of the aggravating factors set forth in paragraph (7) exists or that one or more of the mitigating factors set forth in paragraph (6) exists. The hearings shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury; or

"(iii) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the court and of the Government.

"(3) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of the national security. Any presentence information withheld from the defendant shall not be considered in determining the existence or the nonexistence of the factors set forth in paragraph (6) or (7). Any information relevant to any of the mitigating factors set forth in paragraph (6) may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in paragraph (7) shall be governed by

the rules governing the admission of evidence at criminal trials. The Government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in paragraph (6) or (7). The burden of establishing the existence of any of the factors set forth in paragraph (7) is on the Government. The burden of establishing the existence of any of the factors set forth in paragraph (6) is on the defendant.

"(4) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the factors set forth in paragraph (6) and as to the existence or nonexistence of each of the factors set forth in paragraph (7).

"(5) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the factors set forth in paragraph (7) exists and that none of the factors set forth in paragraph (6) exists, the court shall sentence the defendant to death. If the jury or, if there is no jury, the court finds that none of the aggravating factors set forth in paragraph (7) exists, or finds that one or more of the mitigating factors set forth in paragraph (6) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

"(6) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that at the time of the offense—

"(A) he was under the age of eighteen;

"(B) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

"(C) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

"(D) he was a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

"(E) he could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing death to another person.

"(7) If no factor set forth in paragraph (6) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that—

"(A) the death of another person resulted from the commission of the offense but after the defendant had seized or exercised control of the aircraft; or

"(B) the death of another person resulted from the commission or attempted commission of the offense, and—

"(i) the defendant has been convicted of another Federal or State offense (committed either before or at the time of the commission or attempted commission of the offense) for which a sentence of life imprisonment or death was imposable;

"(ii) the defendant has previously been convicted of two or more State or Federal offenses with a penalty of more than one year imprisonment (committed on different occasions before the time of the commission or attempted commission of the offense), involving the infliction of serious bodily injury upon another person;

"(iii) in the commission or attempted commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense or attempted offense; or

"(iv) the defendant committed or attempted to commit the offense in an especially heinous, cruel, or depraved manner.".

Sec. 106. Title XI of such Act (49 U.S.C. 1501–1513) is amended by adding at the end thereof the following new sections:

"SUSPENSION OF AIR SERVICES

"SEC. 1114. (a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft,[1] or if he determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training or as a sanctuary for, or in any way arms, aids, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier or foreign air carrier to engage in foreign air transportation, and the right of any person to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1102 of this Act, the President's authority to suspend rights under this section shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

"(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or for any person to operate aircraft in foreign air commerce in violation of the suspension of rights by the President under this section.

"SECURITY STANDARDS IN FOREIGN AIR TRANSPORTATION

"SEC. 1115. (a) Not later than 30 days after the date of enactment of this section the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of this Act, of the provisions of subsection (b) of this section.

"(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign nation with which the United States has a bilateral air transport agreement and in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of this Act, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation,[3] he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such convention. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation.".

Sec. 107. * * *

Sec. 108. * * *

Sec. 109. * * *

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[3] 61 Stat. 1180.

b. Suspension of Foreign Air Transportation to Lebanon by U.S. Air Carriers and of Foreign Air Transportation by Lebanese Carriers

Presidential Determination No. 85-14, July 1, 1985, 50 FR 31835

MEMORANDUM FOR THE HONORABLE ELIZABETH H. DOLE, THE SECRETARY OF TRANSPORTATION

By virtue of the authority vested in me by Section 1114(a) of the Federal Aviation Act of 1958, as amended ("the Act"), I hereby:

(1) determine that Lebanon is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft;

(2) suspend the rights of all air carriers within the meaning of Section 101(3) of the Act to engage in foreign air transportation, whether direct or indirect (including through interline agreements), to and from Lebanon; and

(3) suspend the rights of Middle East Airlines Airliban, S.A.L. (MEA), on its own behalf, and Trans-Mediterranean Airways, S.A.L. (TMA), both Lebanese carriers, to engage in foreign air transportation within the meaning of Section 101(24) of the Act.

You are requested to bring this determination and these suspensions immediately to the attention of all air carriers within the meaning of Section 101(3) of the Act and to the attention of MEA and TMA.

This determination shall be published in the Federal Register.

89-453 O - 89 - 14

2. International Cooperation in Scientific Research

a. National Science Foundation Act of 1950, as amended

Partial text of Public Law 81-507 [S. 247], 64 Stat. 154, approved May 10, 1950, as amended by Public Law 86-232 [H.R. 8284], 73 Stat. 468, approved September 8, 1959; and by Public Law 90-407 [H.R. 5404], 82 Stat. 365, approved July 18, 1968

* * * * * * *

INTERNATIONAL COOPERATION AND COORDINATION WITH FOREIGN POLICY

Sec. 13.[1] (a) The Foundation is hereby authorized to cooperate in any international scientific research activities consistent with the purposes of this Act and to expand for such international scientific research activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director, with the approval of the Board, may defray the expenses of representatives of Government agencies and other organizations and of individual scientists to accredited international scientific congresses and meetings whenever he deems it necessary in the promotion of the objectives of this Act.

(b)(1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 11(c), and the authority to cooperate in international scientific research activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

(2) If, in the exercise of the authority referred to in paragraph (1) of this subsection, negotiation with foreign countries or agencies thereof becomes necessary, such negotiation shall be carried on by the Secretary of State in consultation with the Director.[2]

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[1] 42 U.S.C. 1872.

[2] Subsec. (a) of Public Law 86-232 (73 Stat. 468) (1959), authorized the Foundation, with approval of the Secretary of State, to cooperate in scientific activities rather than scientific research activities, and to grant fellowships or make other arrangements with foreign nationals for scientific study or scientific work in the United States. Subsec. (b)(1) deleted "research" from the phrase "scientific research activities."

Subsec. (a) of Public Law 90-407, (82 Stat. 365) (1968), struck out ", with the approval of the Board," following "The Director" (see 42 U.S.C. 1872).

b. National Aeronautics and Space Act of 1958

Partial text of Public Law 85–568 [H.R. 12575], 72 Stat. 426, approved July 29, 1958

AN ACT To provide for research into problems of flight within and outside the Earth's atmosphere, and for other purposes.

* * * * * * *

INTERNATIONAL COOPERATION

Sec. 205.[1] The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this Act, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

* * * * * * *

[1] 42 U.S.C. 2475.

c. National Aeronautics and Space Administration Authorization Act, 1976 [1]

Partial text of Public Law 94-39 [H.R. 4700], 89 Stat. 218, approved June 19, 1975

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes.

* * * * * * *

TITLE IV—UPPER ATMOSPHERIC RESEARCH

PURPOSE AND POLICY

Sec. 401. (a) The purpose of this title is to authorize and direct the Administration to develop and carry out a comprehensive program of research, technology, and monitoring of the phenomena of the upper atmosphere so as to provide for an understanding of and to maintain the chemical and physical integrity of the Earth's upper atmosphere.

(b) The Congress declares that it is the policy of the United States to undertake an immediate and appropriate research, technology, and monitoring program that will provide for understanding the physics and chemistry of the Earth's upper atmosphere.

DEFINITIONS

Sec. 402. For the purpose of this title the term "upper atmosphere" means that portion of the Earth's sensible atmosphere above the troposphere.

PROGRAM AUTHORIZED

Sec. 403. (a) In order to carry out the purposes of this title the Administration in cooperation with other Federal agencies, shall initiate and carry out a program of research, technology, monitoring, and other appropriate activities directed to understand the physics and chemistry of the upper atmosphere.

(b) In carrying out the provisions of this title the Administration shall—

(1) arrange for participation by the scientific and engineering community, of both the Nation's industrial organizations and institutions of higher education, in planning and carrying out appropriate research, in developing necessary technology and in making necessary observations and measurements;

(2) provide, by way of grant, contract, scholarships or other arrangements, to the maximum extent practicable and consistent with other laws, for the widest practicable and appropriate

[1] 42 U.S.C. 2481-2484.

participation of the scientific and engineering community in the program authorized by this title; and

(3) make all results of the program authorized by this title available to the appropriate regulatory agencies and provide for the widest practicable dissemination of such results.

INTERNATIONAL COOPERATION

Sec. 404. In carrying out the provisions of this title, the Administration, subject to the direction of the President and after consultation with the Secretary of State, shall make every effort to enlist the support and cooperation of appropriate scientists and engineers of other countries and international organizations.

* * * * * * *

d. National Aeronautics and Space Administration Authorization Act of 1988

Partial Text of Public Law 100-147 [H.R. 2782], 101 Stat. 860, approved October 30, 1987

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development; space flight, control and data communications; construction of facilities; and research and program management; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act of 1988".

* * * * * * *

SEC. 106. (a) [1] * * *

* * * * * * *

(d) * * *

(e) The Administrator shall promote international cooperation in the space station program by undertaking the development, construction, and operation of the space station in conjunction with (but not limited to) the Governments of Europe, Japan, and Canada.

* * * * * * *

SEC. 112.[1] The Intergovernmental Agreement currently being negotiated between the United States Government and Canada, Japan, and member governments of the European Space Agency, and the Memorandum of Understanding currently being negotiated between the National Aeronautics and Space Administration and its counterpart agencies in Canada, Japan, and Europe concerning the detailed design, development, construction, operation, or utilization of the space station shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. No such agreement shall take effect until 30 days have passed after the receipt by such committees of the agreement.

[1] 42 U.S.C. 2451

e. National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989

Partial Text of Public Law 100-685 [S. 2209], 102 Stat. 4083, approved November 17, 1988

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989".

TITLE I—NATIONAL AERONAUTICS AND SPACE CAPITAL DEVELOPMENT PROGRAM

FINDINGS

SEC. 101.[1] Congress finds that—

(1) in accordance with section 106 of the National Aeronautics and Space Administration Authorization Act of 1988 (Public Law 100-147), a space station, hereafter referred to as the United States International Space Station, shall be constructed in order to establish a permanent presence for man in space for the following purposes—

(A) the conduct of scientific experiments, applications experiments, and engineering experiments;

* * * * * * *

(10) the United States faces an increasingly successful foreign challenge to its traditional preeminent position in aeronautics which is rapidly reducing its lead in both civil and military aircraft;

* * * * * * *

(12) the establishment of a permanent presence in space leading ultimately to space settlements is fully consistent with the goals of the National Aeronautics and Space Act of 1958;

* * * * * * *

[1] 42 U.S.C. 2451 note.

TITLE II—FISCAL YEAR 1989 NASA AND MULTIYEAR SPACE STATION AUTHORIZATION

AUTHORIZATION

SEC. 201. (a) There is hereby authorized to be appropriated to the National Aeronautics and Space Administration for fiscal year 1989, except as otherwise stated:

(1) For "Research and development" for the following programs:

(A) United States International Space Station, $900,000,000 for fiscal year 1989, $2,130,200,000 for fiscal year 1990, and $2,912,500,000 for fiscal year 1991.

* * * * * * *

INTERNATIONAL SPACE DOCKING CAPABILITY

SEC. 210. (a) It is the sense of Congress that the Administrator should establish a multilateral working group of representatives from the space agencies of appropriate spacefaring nations, including the Union of Soviet Socialist Republics, and from appropriate international entities, to explore the technological and procedural principles that would be necessary to achieve an international space docking capability, communications, and life support systems, and also space rescue missions which could particularly benefit from the use of such a capability.

(b) Within 6 months after the date of the enactment of this Act, the Administrator shall advise the Congress on the status of establishing an International Space Docking Working Group as recommended in subsection (a).

* * * * * * *

SPACE SETTLEMENTS

SEC. 217. (a) * * *

(b) In pursuit of the establishment of an International Space Year in 1992 pursuant to Public Law 99-170, the United States shall exercise leadership and mobilize the international community in furtherance of increasing mankind's knowledge and exploration of the solar system.

(c) Once every 2 years after the date of the enactment of this Act, the National Aeronautics and Space Administration shall submit a report to the President and to the Congress which—

* * * * * * *

(7) reviews mechanism and institutional options which could foster a broad-based plan for international cooperation in establishing space settlements;

(8) analyzes the economics of financing space settlements, especially with respect to private sector and international participation;

* * * * * * *

SEC. 410. The Secretary, in Consultation with the Secretary of State, the Administration of the National Aeronautics and Space

Administration, and appropriate non-Federal organizations, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a plan to construct and operate a worldwide system of ground-based remote sensors to monitor the stratospheric levels of chemicals which can affect the level of ozone in the stratosphere and to use these results to improve our understanding of the possible changes in stratospheric ozone that are the consequence of human activities. The plans shall include time lines for construction and operation of the system, a description of the roles of the National Oceanic and Atmospheric Administration and the National Aeronautics and Space Administration, non-Federal organizations, other nations, and international organizations in constructing and operating the system, and estimates of the costs to construct and operate the system. The plan shall be submitted not later than July 1, 1989.

SEC. 411. It is the sense of the Congress that the global change program represents a significant opportunity for international cooperation and that it is in the best interest of the United States to maintain a separate civilian polar meteorological satellite program to facilitate data sharing with foreign participants in the global change program.

* * * * * * *

f. Cooperative East-West Ventures in Space

Public Law 98-562 [S.J. Res. 236], 98 Stat. 2914, approved October 30, 1984

JOINT RESOLUTION Relating to cooperative East-West ventures in space.

Whereas the United States and the Soviet Union could soon find themselves in an arms race in space, which is in the interest of no one;

Whereas the prospect of an arms race in space between the United States and the Soviet Union has aroused worldwide concern expressed publicly by the governments of many countries;

Whereas the 1972–1975 Apollo-Soyuz project involving the United States and the Soviet Union and culminating with a joint docking in space was successful, thus proving the practicability of a joint space effort;

Whereas shortly after the completion of the Apollo-Soyuz project, and intended as a followup to it, the United States and the Soviet Union signed an agreement to examine the feasibility of a Shuttle-Salyut program and an international space platform program, but that initiative was allowed to lapse;

Whereas the United States signed a five-year space cooperation agreement with the Soviet Union in 1972, renewed it in 1977, then chose not to renew it in 1982;

Whereas the United States recently proposed to the Soviet Union that the two Nations conduct a joint simulated space rescue mission;

Whereas the Soviet Union has not yet responded to the substance of this proposal; and

Whereas the opportunities offered by space for prodigious achievements in virtually every field of human endeavor, leading ultimately to the colonization of space in the cause of advancing human civilization, would probably be lost irretrievably were space to be made into yet another East-West battleground: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President should—

(1) endeavor, at the earliest practicable date, to renew the 1972–1977 agreement between the United States and the Soviet Union on space cooperation for peaceful purposes;

(2) continue energetically to gain Soviet agreement to the recent United States proposal for a joint simulated space rescue mission;

(3) seek to initiate talks with the Government of the Soviet Union, and with other governments interested for cooperative East-West ventures in space including cooperative ventures in such areas as space medicine and space biology, planetary science, manned and unmanned space exploration.

3. Arctic Research

a. Arctic Research and Policy Act of 1984

Title I of Public Law 98–373 [S. 373], 98 Stat. 1242, approved July 31, 1984

AN ACT To provide for a comprehensive national policy dealing with national research needs and objectives in the Arctic, for a National Critical Materials Council, for development of a continuing and comprehensive national materials policy for programs necessary to carry out that policy, including Federal programs of advanced materials research and technology, and for innovation in basic materials industries, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

TITLE I—ARCTIC RESEARCH AND POLICY

SHORT TITLE

Sec. 101. This title may be cited as the "Arctic Research and Policy Act of 1984".

FINDINGS AND PURPOSES

Sec. 102.[1] (a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2) as the Nation's only common border with the Soviet Union, the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

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[1] 15 U.S.C. 4101.

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries, particularly the Soviet Union, possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this title are—

(1) to establish national policy, priorities, and goals and to provide a Federal program to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five-year plan to implement that policy.

ARCTIC RESEARCH COMMISSION

Sec. 103.[2] (a) The President shall establish an Arctic Research Commission (hereafter referred to as the "Commission").

(b)(1) The Commission shall be composed of five members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting, ex officio member. The members appointed by the President shall include—

(A) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(B) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resource development; and

(C) one member appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c)(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1)—

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d)(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

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[2] 15 U.S.C. 4102.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 107(b) may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

DUTIES OF COMMISSION

Sec. 104.[3] (a) The Commission shall—

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 107, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this title;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 107 as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall—

(1) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 107 in the performance of its duties; and

(2) submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediate preceding fiscal year.

COOPERATION WITH THE COMMISSION

Sec. 105.[4] (a)(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the posses-

[3] 15 U.S.C. 4103.
[4] 15 U.S.C. 4104.

sion of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5, United States Code.

(b) With the consent of the appropriate agency head, the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

ADMINISTRATION OF THE COMMISSION

Sec. 106.[5] The Commission may—

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, United States Code, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5, United States Code;

(3) enter into contracts and procure supplies, services and personal property, and

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration.

LEAD AGENCY AND INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE

Sec. 107.[6] (a) The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 108 are fulfilled.

(b)(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;

(B) the Department of Commerce;

(C) the Department of Defense;

(D) the Department of Energy;

(E) the Department of the Interior;

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[5] 15 U.S.C. 4105.

[6] 15 U.S.C. 4106.

(F) the Department of State;
(G) the Department of Transportation;
(H) the Department of Health and Human Services;
(I) the National Aeronautics and Space Administration;
(J) the Environmental Protection Agency; and
(K) any other agency or office deemed appropriate.

(3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

DUTIES OF THE INTERAGENCY COMMITTEE

Sec. 108.[7] (a) The Interagency Committee shall—

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on—

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided for in section 109;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 110;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research in accordance with the findings and purposes of this title;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this title;

(9) promote Federal interagency coordination of all Arctic research activities, including—

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code; and

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[7] 15 U.S.C. 4107.

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing—

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2) a description of the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

5-YEAR ARCTIC RESEARCH PLAN

Sec. 109.[8] (a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after the enactment of this Act and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

(1) An assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all rch programs, and (B) eliminating unnecessary duplication of effort among these programs.

COORDINATION AND REVIEW OF BUDGET REQUESTS

Sec. 110.[9] (a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 108(a)(5), in accordance with the national Arctic research policy and the 5-year program under section 108(a)(2) and section 109, respectively; and

[8] 15 U.S.C. 4108.
[9] 15 U.S.C. 4109.

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget requests for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

AUTHORIZATION OF APPROPRIATIONS; NEW SPENDING AUTHORITY

Sec. 111.[10] (a) There are authorized to be appropriated such sums as may be necessary for carrying out this title.

(b) Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to such extent or in such amounts as may be provided in appropriation Acts.

DEFINITION

Sec. 112.[11] As used in this title, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

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[10] 15 U.S.C. 4110.
[11] 15 U.S.C. 4111.

b. Arctic Research Commission

Executive Order 12501, January 28, 1985, 50 F.R. 4191

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98–373) ("the Act"), it is hereby ordered as follows:

Section 1.

ESTABLISHMENT OF ARCTIC RESEARCH COMMISSION

There is established the Arctic Research Commission.

Sec. 2. Membership of the Commission.

(a) The Commission shall be composed of five members appointed by the President, as follows:

(1) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(2) one member appointed from among indigenous residents of the Arctic who are representatives of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resources development; and

(3) one member appointed from individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

The Director of the National Science Foundation shall serve as a nonvoting *ex officio* member of the Commission. The President shall designate a Chairperson from among the five voting members of the Commission.

(b) In making initial appointments to the Commission, the President shall designate one member to serve for a term of two years, two members to serve for terms of three years, and two members to serve for terms of four years as provided by Section 103(c) of the Act. Upon the expiration of these initial terms of office, the term of office of each member of the Commission shall be four years.

(c) Each of the Federal agencies represented on the Interagency Committee established by Section 7 of this Order may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities of their agencies relating to Arctic research.

Sec. 3. Meetings of the Commission.

The Commission shall meet at the call of the Chairman or a majority of its members. The Commission annually shall conduct at least one public meeting in the State of Alaska.

Sec. 4. Functions of the Commission.

(a) The Commission shall:

(1) develop and recommend an integrated national Arctic research policy;

(2) assist, in cooperation with the Interagency Arctic Research Policy Committee established by Section 7 of this Order, in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Arctic Research Policy Committee as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska, and with agencies and organizations of that State which the Governor may designate, with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall:

(1) submit to the President and Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year; and

(2) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Arctic Research Policy Committee in the performance of its duties.

Sec. 5. Responsibilities of Federal Agencies.

(a) The heads of Executive agencies shall, to the extent permitted by law, and in accordance with Section 105 of the Act, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) The heads of Executive agencies shall, upon reimbursement to be agreed upon by the Commission and the agency head, permit the Commission to utilize their facilities and services to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy. The Commission shall take every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

Sec. 6. Administration of the Commission. Members of the Commission who are otherwise employed for compensation shall serve without compensation for their work on the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service. Members of the Commission who are not otherwise employed for compensation shall be compensated for each day the member is engaged in actual performance of duties as a member, not to exceed 90 days of service each calendar year, at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule.

Sec. 7. Establishment of Interagency Arctic Research Policy Committee. There is established the Interagency Arctic Research Policy Committee (the "Interagency Committee"). The National Science Foundation shall serve as lead agency on the Interagency Committee and shall be responsible for implementing Arctic research policy.

Sec. 8. Membership of the Interagency Committee.

The Interagency Committee shall be composed of representatives of the following Federal agencies or their designees:

(a) National Science Foundation;
(b) Department of Commerce;
(c) Department of Defense;
(d) Department of Energy;
(e) Department of Interior;
(f) Department of State;
(g) Department of Transportation;
(h) Department of Health and Human Services;
(i) National Aeronautics and Space Administration;
(j) Environmental Protection Agency;
(k) Office of Science and Technology Policy; and
(l) any other Executive agency that the Director of the National Science Foundation shall deem appropriate. The Director of the National Science Foundation or his designee shall serve as Chairperson of the Interagency Committee.

Sec. 9. Functions of the Interagency Committee. (a) The Interagency Committee shall:

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on:

(a) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(b) Arctic research programs of Federal agencies;

(c) recommendations of the Commission on future Arctic research; and

(d) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109 of the Act;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research, as provided in section 110 of the Act;

(6) facilitate cooperation between the Federal government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under the Act; and

(9) promote Federal interagency coordination of all Arctic research activities, including:

(a) logistical planning and coordination; and

(b) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President a report concerning:

(1) its activities and accomplishments since its last report; and

(2) the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

Sec. 10. Public Participation. The Interagency Committee will provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

Sec. 11. Administration of Interagency Committee. Each agency represented on the Committee shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, facilities, staff, and other support services as may be necessary for effective performances of its functions.

N. OTHER LEGISLATION

CONTENTS

	Page
1. Provisions of Law Relating to Travel Outside the United States	431
a. Local Currency Availability (Public Law 83-665)	431
b. Reporting Requirements for House Interparliamentary Groups (Legislative Branch Appropriation Act of 1961, as amended) (Public Law 86-628) (partial text)	434
c. Availability of Funds for Field Examination of Estimates (Public Law 83-207) (partial text)	436
2. Legislation Authorizing U.S. Participation in Parliamentary Conferences	437
a. Interparliamentary Union	437
(1) Public Law 74-170, as amended	437
(2) Public Law 85-474, as amended	440
b. Canada-United States Interparliamentary Group (Public Law 86-42)	441
c. Mexico-United States Interparliamentary Group (Public Law 86-420)	443
d. United States Group of the North Atlantic Assembly (Public Law 84-689, as amended)	445
e. United States-European Community Interparliamentary Group—Appropriation Authorization (Public Law 98-164 (partial text)	448
f. Requirements Relating to Funds for International Organizations and Conferences (Public Law 99-415) (partial text)	449
3. International Claims Settlement Acts	450
a. International Claims Settlement Act of 1949, as amended (Public Law 81-455)	450
b. Ryukyu Claims Settlement Act (Public Law 89-296)	499
c. Micronesian Claims Act of 1971, as amended (Public Law 92-39)	501
(1) Civil Government for the Trust Territory of the Pacific Islands, as amended (Public Law 83-451)	507
(2) Trust Territory Economic Development Loan Fund, as amended (Public Law 92-257)	511
d. Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127)	513
e. Iran Claims Settlement (Public Law 99-93, partial text)	520
4. Registration of foreign Agents	523
a. The Foreign Agents Registration Act of 1938, as amended (Public Law 75-583)	523
b. Contributions by Agents of Foreign Principals and Conflicts of Interest (Public Law 89-486) (partial text)	538
c. Agents of Foreign Governments (18 U.S.C. 951)	540
5. Logan Act—Private Correspondence With Foreign Governments (Public Law 80-772)	542
6. Restriction on Intelligence Agency Cooperation With South Africa (Public Law 99-569) (partial text)	543
7. Policy on Recognition of the Palestine Liberation Organization (Public Law 99-591) (partial text)	544
8. Neutrality Act and Related Material	545
a. Neutrality Act of 1939, as amended (Public Resolution 76-54)	545
b. Enlistment in Foreign Service (18 U.S.C. 959.)	552
c. Expedition Against Friendly Nation—Arming Vessel Against Friendly Nation (18 U.S.C. 960, 962)	553
d. Strengthening Armed Vessel of Foreign Nation (18 U.S.C. 961)	554
9. National Security Emergency Preparedness Responsibilities (Executive Order 12656) (partial text)	555
10. United States Government Opposition to the Practice of Torture (Public Law 98-447)	566

Page

11. Commission on the Ukraine Famine Act (Public Law 99-180) (partial text) 569
12. Assignment of National Security and Emergency Preparedness Telecommunications Functions (Executive Order 12472) 573
13. Inspector General Act of 1978 (Public Law 95-452) 582
14. Resolution Establishing a Select Committee on Intelligence (S. Res. 400) (partial text) 604
15. Permanent Select Committee on Intelligence (House Rule XLVIII) (partial text) 606
16. National Security Council (Public Law 80-253) (partial text) 607
17. Iran-Iraq War Ceasefire (Public Law 100-96) 610
18. Appeal for the Release of Soviet Jewry (Public Law 99-81) 612
19. Soviet Spouse and Fiance Emigration (Public Law 100-222) 613
20. Tercentenary Celebration (Public Law 99-393) 615
21. National Year of Friendship with Finland (Public Law 99-602) 616
22. Greek Independence Day (Public Law 100-266) 617
23. National Former Prisoners of War Recognition Day (Public Law 100-269) 619
24. Jewish Heritage Week (Public Law 100-292) 619
25. Year of New Sweden Plaques (Public Law 100-295) 620
26. Religious Freedom in the Ukraine, U.S.S.R. (Public Law 100-305) 621
27. Commending Israel on its 40th Anniversary (Public Law 100-311) 623
28. Baltic Freedom Day (Public Law 100-343) 625
29. United States-Canada Days of Peace and Friendship (Public Law 100-361) 627
30. Geography Awareness Week (Public Law 100-391) 628
31. German-American Day (Public Law 100-392) 630
32. National POW/MIA Recognition Day (Public Law 100-431) 631
33. Mohandas K. Gandhi Day of Recognition (Public Law 100-468) 632
34. French Revolution Bicentennial (Public Law 100-482) 634
35. Restoration of a Free and Independent Cambodia (Public Law 100-502) 636
36. Week of Remembrance of Kristallnacht (Public Law 100-632) 639
37. National Sir Winston Churchill Recognition Week (Public Law 100-663) 640

1. Provisions of Law Relating to Travel Outside the United States

a. Local Currency Availability

Partial text of Public Law 83-665 [H.R. 9678], 68 Stat. 832, approved August 26, 1954, as amended by Public Law 83-778 [H.R. 10051], 68 Stat. 1223, approved September 3, 1954; by Public Law 84-726 [H.R. 11356], 70 Stat. 560, approved July 18, 1956; by Public Law 85-477 [H.R. 12181], 72 Stat. 268, approved June 30, 1958; by Public Law 85-766 [H.R. 13450], 72 Stat. 880, approved August 27, 1958; by Public Law 86-472 [H.R. 11510], 74 Stat. 138, approved May 14, 1960; by Public Law 86-628 [H.R. 12232], 74 Stat. 460, approved July 12, 1960; by Public Law 86-633 [H.R. 11380], 78 Stat. 1015, approved October 7, 1964; by Public Law 93-126 [H.R. 7645], 87 Stat. 451 at 452, approved October 18, 1973; by Public Law 93-371 [H.R. 14012], 88 Stat. 424, approved August 13, 1974; by Public Law 94-59 [H.R. 6950], 89 Stat. 269, approved July 25, 1975; by Public Law 94-157 [H.R. 10647], 89 Stat. 826 at 837, approved December 18, 1975; by Public Law 94-350 [S. 3168], 90 Stat. 823 at 833, approved July 12, 1976; by Public Law 94-440 [H.R. 14238], 90 Stat. 1439 at 1445, approved October 1, 1976; and by Public Law 95-384 [S. 3750], 92 Stat. 730 at 742, approved September 26, 1978

AN ACT To promote the security and foreign policy of the United States by furnishing assistance to friendly nations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mutual Security Act of 1954".

* * * * * * *

Sec. 502. * * *

(b) [1] (1)(A) Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law—

(i) local currencies owned by the United States which are in excess of the amounts reserved under section 612(a) of the Foreign Assistance Act of 1961 and of the requirements of the United States Government in payment of its obligations outside of the United States, as such requirements may be determined from time to time by the President; and

(ii) any other local currencies owned by the United States in amounts not to exceed the equivalent of $75 per day per person or the maximum per diem allowance established under the authority of subchapter I of chapter 57 of title 5 of the United States Code for employees of the United States Government while traveling in a foreign country, whichever is greater, exclusive of the actual cost of transportation;

shall be made available to Members and employees of the Congress for their local currency expenses when authorized as provided in subparagraph (B).

(B) The authorization required for purposes of subparagraph (A) may be provided—

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[1] 22 U.S.C. 1754(b). Subsec. (b) was comprehensively amended and restated by sec. 22 of the International Security Assistance Act of 1978 (92 Stat. 742).

(i) by the Speaker of the House of Representatives in the case of a Member or employee of the House;

(ii) by the chairman of a standing or select committee of the House of Representatives in the case of a member or employee of that committee;

(iii) by the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, in the case of a Member or employee of the Senate;

(iv) by the chairman of a standing, select, or special committee of the Senate in the case of a member or employee of that committee or of an employee of a member of that committee; and

(v) by the chairman of a joint committee of the Congress in the case of a member or employee of that committee.

(C) Whenever local currencies owned by the United States are not otherwise available for purposes of this subsection, the Secretary of the Treasury shall purchase such local currencies as may be necessary for such purposes, using any funds in the Treasury not otherwise appropriated.

(2) On a quarterly basis, the chairman of each committee of the House of Representatives or the Senate and of each joint committee of the Congress (A) shall prepare a consolidated report (i) which itemizes the amounts and dollar equivalent values of each foreign currency expended and the amounts of dollar expenditures from appropriated funds in connection with travel outside the United States, stating the purposes of the expenditures including per diem (lodging and meals), transportation, and other purposes, and (ii) which shows the total itemized expenditures, by such committee and by each member or employee of such committee (including in the case of a committee of the Senate, each employee of a member of the committee who received an authorization under paragraph (1) from the chairman of the committee); and (B) shall forward such consolidated report to the Clerk of the House of Representatives (if the committee is a committee of the House of Representatives or a joint committee whose funds are disbursed by the Clerk of the House) or to the Secretary of the Senate (if the committee is a committee of the Senate or a joint committee whose funds are disbursed by the Secretary of the Senate). Each such consolidated report shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after the report is forwarded pursuant to this paragraph. In the case of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, such consolidated report may, in the discretion of the chairman of the committee, omit such information as would identify the foreign countries in which members and employees of that committee traveled.

(3)(A) Each Member or employee who receives an authorization under paragraph (1) from the Speaker of the House of Representatives, the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, shall within thirty days after the completion of the travel involved, submit a report setting forth the information speci-

fied in paragraph (2), to the extent applicable, to the Clerk of the House of Representatives (in the case of a Member of the House or an employee whose salary is disbursed by the Clerk of the House) or the Secretary of the Senate (in the case of a Member of the Senate or an employee whose salary is disbursed by the Secretary of the Senate). In the case of an authorization for a group of Members or employees, such reports shall be submitted for all Members of the group by its chairman, or if there is no designated chairman, by the ranking Member or if the group does not include a Member, by the senior employee in the group. Each report submitted pursuant to this subparagraph shall be open to public inspection.

(B) On a quarterly basis, the Clerk of the House of Representatives and the Secretary of the Senate shall each prepare a consolidation of the reports received by them under this paragraph with respect to expenditures during the preceding quarter by each Member and employee or by each group in the case of expenditures made on behalf of a group which are not allocable to individual members of the group. Each such consolidation shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after its completion.

* * * * * * *

b. Reporting Requirements for House Interparliamentary Groups

Partial text of Public Law 86-628 [Legislative Branch Appropriation Act of 1961; H.R. 12232], 74 Stat. 446; 22 U.S.C. 276c-1, approved July 12, 1960, as amended by Public Law 90-137 [S. 1872], 81 Stat. 445 at 463, approved November 19, 1967; and by Public Law 94-59 [H.R. 6950], 89 Stat. 269, approved July 25, 1975

AN ACT Making appropriations for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes, namely:

* * * * * * *

Sec. 105.[1] * * *

(b) Each chairman or senior member of the House of Representatives and Senate group or delegation of the United States group or delegation to the Interparliamentary Union,[2] the North Atlantic Assembly,[3] the Canada-United States Interparliamentary Group,[4] the Mexico-United States Interparliamentary Group,[5] or any similar interparliamentary group of which the United States is a member or participates, by whom or on whose behalf local currencies owned by the United States are made available and expended and/or expenditures are made from funds appropriated for the expenses of such group or delegation, shall file with the chairman of the Committee on Foreign Relations of the Senate in the case of the group or delegation of the Senate, or with the chairman of the Committee on Foreign Affairs [6] of the House of Representatives in the case of the group or delegation of the House, an itemized report showing all such expenditures made by or on behalf of each Member or employee of the group or delegation together with the purposes of the expenditure, including per diem (lodging and meals). transportation, and for other purposes. Within sixty days after the beginning of each regular session of Congress, the chairman of the Committee on Foreign Relations and the chairman of the Committee on Foreign Affairs [1] shall prepare consolidated reports showing with respect to each such group or delegation the total amount expended, the purpose of the expenditures, the

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[1] Sec. 105 was amended and restated by sec. 1104 of Public Law 94-59.

[2] See page 437 for text of Interparliamentary Union Participation Act.

[3] See page 445 for text of resolution authorizing participation in NATO parliamentary conferences.

[4] See page 441 for text of resolution authorizing participation in parliamentary conferences with Canada.

[5] See page 443 for text of resolution authorizing participation in parliamentary conferences with Mexico.

[6] The name of the "Committee on International Relations" was changed to "Committee on Foreign Affairs" on Feb 5, 1979, by H. Res. 89 (96th Congress).

amount expended for each such purpose, the names of the Members or employees by or on behalf of whom the expenditures were made and the amount expended by or on behalf of each Member or employee for each such purpose. The consolidated reports prepared by the chairman of the Committee on Foreign Relations of the Senate shall be filed with the Secretary of the Senate, and the consolidated reports prepared by the chairman of the Committee on Foreign Affairs [6] of the House shall be filed with the Committee on House Administration of the House and shall be open to public inspection.

* * * * * * *

c. Availability of Funds for Field Examination of Estimates

Partial text of Public Law 83-207 [H.R. 6200], 67 Stat. 418 at 438, approved August 7, 1953

AN ACT Making supplemental appropriations for the fiscal year ending June 30, 1954, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Supplemental Appropriations Act, 1954") for the fiscal year ending June 30, 1954, and for other purposes, namely:

* * * * * * *

§ 1108. * * *

(g) [1] Amounts available under law are available for field examinations of appropriation estimates. The use of the amounts is subject only to regulations prescribed by the appropriate standing committees of Congress.

[1] As originally enacted in Public Law 83-207, this provision was codified at 31 U.S.C. 22a. Public Law 97-258 (96 Stat. 913) recodified title 31, changed this provision to 31 U.S.C. 1108(g), and amended the text.

2. Legislation Authorizing U.S. Participation in Parliamentary Conferences [1]

a. Interparliamentary Union

(1) Public Law 74-170 [S. 2276], 49 Stat. 425; 22 U.S.C. 276, approved June 28, 1935, as amended by Public Law 80-409 [S. 1005], 62 Stat. 19, approved February 6, 1948; by Public Law 85-477 [H.R. 12181], 72 Stat. 272, approved June 20, 1958; by Public Law 87-195 [S. 1983], 75 Stat. 465, approved September 4, 1961; by Public Law 87-56 [S. 2996], 76 Stat. 263, approved August 1, 1962; by Public Law 88-633 [H.R. 11380], 87 Stat. 1014, approved October 7, 1964; by Public Law 90-137 [S. 1872], 81 Stat. 463, approved November 14, 1967; by Public Law 92-226 [S. 2819], 86 Stat. 34, approved February 7, 1972; by Public Law 93-126 [H.R. 7645], 87 Stat. 452, approved October 18, 1973; by Public Law 94-141 [S. 1517], 89 Stat. 756, approved November 29, 1975; by Public Law 95-45 [H.R. 5040], 91 Stat. 221 as 223, approved June 15, 1977; and by Public Law 95-426 [H.R. 12598], 92 Stat. 963 at 994, approved October 7, 1978

AN ACT To authorize participation by the United States in the Interparliamentary Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [2] there is authorized to be appropriated for fiscal year 1976 and for each subsequent fiscal year—

(1) for the annual contribution of the United States toward the maintenance of the Bureau of the Interparliamentary Union for the promotion of international arbitration, an amount equal to 13.61 per centum of the budget of the Interparliamentary Union for the year with respect to which such contribution is to be made if the American group of the Interparliamentary Union has approved such budget; and

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[1] See page 431 for laws relating to reporting of expenses incurred in connection with travel outside the United States.

[2] As amended by sec. 204(a) of Public Law 94-141 (89 Stat. 762). Originally $20,000 annually was authorized with $10,000 authorized for the annual contribution of the United States toward maintenance of the Bureau and $10,000 authorized to meet the expenses of the American group. The authorization figures have been amended eight times. Sec. 204(a) reworded the entire section which had previously read: "That an appropriation of $120,000 annually is authorized, $75,000 of which shall be for the annual contributions of the United States toward the maintenance of the Bureau of the Interparliamentary Union for the promotion of international arbitration; and $45,000, or so much thereof as may be necessary, to assist in meeting the expense of the American group of the Interparliamentary Union for each fiscal year for which an appropriation is made, such appropriation to be disbursed on vouchers to be approved by the president and executive secretary of the American Group."

Sec. 303 of Title III of Publ Law 100-202 (101 Stat. 1329-23) provided the following permanent appropriation for delegation expenses:

"SEC. 303. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a total of $290,000 for each fiscal year to carry out (in accordance with the respective authorization amounts) paragraph (2) of the first section of Public Law 74-170, section 2(2) of Public Law 84-689, section 2 of Public Law 86-42, and section 2 of Public Law 86-420. These funds may be disbursed to each delegation, pursuant to vouchers in accordance with the applicable provisions of law, at any time requested by the Chairman of the delegation after that fiscal year begins." This sec. of Public Law 100-202 was subsequently amended by sec. 303 of Public Law 100-459 (102 Stat. 2207) which inserted "$340,000" in lieu of "$290,000", and added ", and section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985." after "Public Law 86-420."

(2) to assist in meeting the expenses of the American group for such fiscal year, $90,000,[3] or so much thereof as may be necessary.

Funds made available under paragraph (2) shall be disbursed on vouchers to be approved by the Chairman [4] of the House delegation in the case of delegates from the House of Representatives or the Chairman of the Senate delegation in the case of delegates from the Senate, except that either such Chairman may authorize the executive secretary of the American group to approve such vouchers on his behalf.

Sec. 2. The American group of the Interparliamentary Union shall submit to the Congress a report for each fiscal year for which an appropriation is made, including its expenditures under such appropriation.

Sec. 3.[5] There shall be not to exceed twelve delegates from the House of Representatives (at least four of whom shall be from the Committee on Foreign Affairs [6]) to each Conference of the Interparliamentary Union, such delegates to be appointed by the Speaker of the House of Representatives. The Chairman or Vice Chairman of the House delegation shall be a member from the Committee on Foreign Affairs.[6] The Speaker shall designate the Chairman and the Vice Chairman of the House delegation for each such Conference.

Sec. 4.[7] Senate delegates to each conference of the Interparliamentary Union, and to all other parliamentary conferences, shall be designated by the President of the Senate upon recommendations of the majority and minority leaders of the Senate. Unless the President of the Senate, upon the recommendation of the majority leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee. Not fewer than two Senators designated to be in the Senate delegation to each conference of the Interparliamentary Union shall be members of the Committee on Foreign Relations.

Sec. 5.[7] After December 31, 1977, the executive secretary of the American group of the Interparliamentary Union shall be an officer or employee of the Senate or the House of Representatives and shall be appointed—

(1) by the Chairman of the Senate delegation upon recommendations of the majority and minority leaders of the Senate for service during odd-numbered Congresses; and

(2) by the Chairman of the House delegation for service during even-numbered Congresses.

Sec. 6.[7] The certificate of the Chairman of the respective delegation to the Interparliamentary Union (or the certificate of the exec-

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[3] This figure was substituted in lieu of $45,000 by sec. 710 of the Foreign Relations Authorization Act, Fiscal Year 1979 (Public Law 95–426; 92 Stat. 994).

[4] Sec. 4(d)(1) of Public Law 95–45 (91 Stat. 223) inserted the text from this point beginning with "Chairman of the House delegation * * *"in lieu of "president and the executive secretary of the American group."

[5] Sec. 3, as added by sec. 204(b) of Public Law 94–141 (89 Stat. 762), was amended and restated by sec. 4(d)(2) of Public Law 95–45 (91 Stat. 223).

[6] The name of the "Committee on International Relations" was changed to "Committee on Foreign Affairs" on Feb 5, 1979, by H. Res. 89 (96th Congress).

[7] Secs. 4, 5, and 6 were added by sec. 44(d)(3) of Public Law 95–45 (91 Stat. 223).

utive secretary of the American group if the Chairman delegates such authority to him) shall be final and conclusive upon the accounting officers in the auditing of all accounts of the House and Senate delegations to the Interparliamentary Union.

89-453 O - 89 - 15

(2) Designation of Senate delegates to Conferences of the Interparliamentary Union

Public Law 85-474 [H.R. 12428], 72 Stat. 244 at 246; 22 U.S.C. 276c, approved June 30, 1958, as amended by Public Law 94-141 [S. 1517], 89 Stat. 756, approved November 29, 1975

On and after June 30, 1958, Senate delegates to Conferences of the Interparliamentary Union shall be designated by the Presiding Officer of the Senate. Not less than two Senators so designated shall be members of the Committee on Foreign Relations.[1]

[1] The last sentence was added by sec. 204(c) of Public Law 94-141 (89 Stat. 762).

b. Canada–United States Interparliamentary Group

Public Law 86–42 [H.J. Res. 254], 73 Stat. 72; 22 U.S.C. 276d–276g, approved June 11, 1959, as amended by Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; and by Public Law 95–45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977

JOINT RESOLUTION To authorize participation by the United States in parliamentary conference with Canada.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not to exceed twenty-four Members of Congress shall be appointed to meet jointly and at least annually and when Congress is not in session (except that this restriction shall not apply during the first session of the Eighty-sixth Congress or to meetings held in the United States) with representatives of the House of Commons and Senate of the Canadian Parliament for discussion of common problems in the interests of relations between the United States and Canada. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the United States group) half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Foreign Affairs [1] Committee), and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate [2] from Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee).

Such appointments shall be for a period of each meeting of the Canada-United States Interparliamentary group except for the four members of the Foreign Affairs [1] Committee and the four members of the Foreign Relations Committee, whose appointments shall be for the duration of each Congress.

The Chairman or Vice Chairman of the House delegation shall be a Member from the International Relations Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[3]

Sec. 2. An appropriation of $50,000 [4] annually is authorized, $25,000 [4] of which shall be for the House delegation and $25,000 [4]

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[1] The name of the "Committee on International Relations" was changed to "Committee on Foreign Affairs" on Feb 5, 1979, by H. Res. 89 (96th Congress). Previously, sec. 4(a) of Public Law 95–45 (91 Stat. 222) had substituted "International Relations" in lieu of "Foreign Affairs."

[2] Sec. 4(a)(1) of Public Law 95–45 (91 Stat. 222) added the words "upon recommendations of the majority and minority leaders of the Senate."

[3] This paragraph was added by Sec. 4(a)(3) of Public Law 95–45 (91 Stat. 222).

[4] Sec. 118(a) of the Foreign Relations Authorization Act, Fiscal Year 1977 (Public Law 94–350) substituted "$50,000" and "$25,000" in lieu of "$30,000" and "$15,000" respectively.

Sec. 303 of Title III of Public Law 100–202 (101 Stat. 1329–23) provided the following permanent appropriation for delegation expenses:

Continued

for the Senate delegation, or so much thereof as may be necessary, to assist in meeting the expenses of the United States group of the Canada-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

Sec. 3. The United States group of the Canada-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

Sec. 4. The certificate of the Chairman of the House delegation or the Senate delegation of the Canada-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Canada-United States Interparliamentary group.

"SEC. 303. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a total of $290,000 for each fiscal year to carry out (in accordance with the respective authorization amounts) paragraph (2) of the first section of Public Law 74-170, section 2(2) of Public Law 84-689, section 2 of Public Law 86-42, and section 2 of Public Law 86-420. These funds may be disbursed to each delegation, pursuant to vouchers in accordance with the applicable provisions of law, at any time requested by the Chairman of the delegation after that fiscal year begins." This sec. of Public Law 100-202 was subsequently amended by sec. 303 of Public Law 100-459 (102 Stat. 2207) which inserted "$340,000" in lieu of "$290,000", and added ", and section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985." after "Public Law 86-420."

c. Mexico–United States Interparliamentary Group

Public Law 86–420 [H.J. Res. 283], 74 Stat. 40; 22 U.S.C. 276h–276k, approved April 9, 1960, as amended by Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; and by Public Law 95–45 [H.R. 5040], 91 Stat. 222, approved June 15, 1977

JOINT RESOLUTION To authorize participation by the United States in parliamentary conferences with Mexico.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not to exceed twenty-four Members of Congress shall be appointed to meet jointly and at least annually with representatives of the Chamber of Deputies and Chamber of Senators of the Mexican Congress for discussion of common problems in the interests of relations between the United States and Mexico. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the United States group) half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Foreign Affairs [1] Committee), and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate [2] from Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee). Such appointments shall be for the period of each meeting of the Mexico-United States Interparliamentary group except for the four members of the Foreign Affairs [1] Committee, and the four members of the Foreign Relations Committee, whose appointment shall be for the duration of each Congress. The Chairman or Vice Chairman of the House delegation shall be a Member from the Foreign Affairs Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[3]

Sec. 2. An appropriation of $50,000 [4] annually is authorized, $25,000 [4] of which shall be for the House delegation and $25,000 [4]

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[1] The name of the "Committee on International Relations" was changed to "Committee on Foreign Affairs" on Feb 5, 1979, by H. Res. 89 (96th Congress). Previously, sec. 4(b) of Public Law 95–45 (91 Stat. 222) had substituted "International Relations" in lieu of "Foreign Affairs."

[2] Sec. 4(b)(1) of Public Law 95–45 (91 Stat. 222) added the words "upon recommendations of the majority and minority leaders of the Senate."

[3] This sentence was added by sec. 4(b)(3) of Public Law 94–45 (91 Stat. 222). The name of the "International Relations Committee" was changed to "Foreign Affairs Committee" on Feb 5, 1979, by H. Res. 89 (96th Congress).

[4] Sec. 118(b) of the Foreign Relations Authorization Act Fiscal Year 1977 (Public Law 94–350) substituted "$50,000" and "$25,000" in lieu of "$30,000" and "$15,000" respectively.

Sec. 303 of Title III of Public Law 100–202 (101 Stat. 1329–23) provided the following permanent appropriation for delegation expenses:

"SEC. 303. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a total of $290,000 for each fiscal year to carry out (in accordance with the respective authorization amounts) paragraph (2) of the first section of Public Law 74–170, section 2(2) of

Continued

for the Senate delegation, or so much thereof as may be necessary to assist in meeting the expenses of the United States group of the Mexico-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

Sec. 3. The United States group of the Mexico-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

Sec. 4. The certificate of the Chairman of the House delegation or the Senate delegation of the Mexico-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Mexico-United States Interparliamentary group.

Public Law 84-689, section 2 of Public Law 86-42, and section 2 of Public Law 86-420. These funds may be disbursed to each delegation, pursuant to vouchers in accordance with the applicable provisions of law, at any time requested by the Chairman of the delegation after that fiscal year begins." This sec. of Public Law 100-202 was subsequently amended by sec. 303 of Public Law 100-459 (102 Stat. 2207) which inserted "$340,000" in lieu of "$290,000", and added ", and section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985." after "Public Law 86-420."

d. United States Group of the North Atlantic Assembly

Public Law 84-689 [H.J. Res. 501], 70 Stat. 523; 22 U.S.C. 1928a-1928e, approved July 11, 1956, as amended by Public Law 85-477 [H.R. 12181], 72 Stat. 261, approved June 30, 1958; by Public Law 88-205 [H.R. 7885], 77 Stat. 379, approved December 16, 1963; by Public Law 90-137 [S. 1782], 81 Stat. 445, approved November 14, 1967; by Public Law 94-350 [S. 3168], 90 Stat. 823, approved July 12, 1976; by Public Law 95-45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977; by Public Law 98-164 [Department of State Authorization Act, Fiscal Years 1984 and 1985; H.R. 2915], 97 Stat. 1017 at 1019, approved November 22, 1983; by Public Law 100-202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329 at 1329-23, approved December 22, 1987; and by Public Law 100-204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989; H.R. 1777], 101 Stat. 1331 at 1396, approved December 22, 1987

JOINT RESOLUTION To authorize participation by the United States in parliamentary conferences of the North Atlantic Treaty Organization.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not to exceed twenty-four [1] Members of Congress shall be appointed to meet jointly and annually [2] with representative parliamentary groups from other NATO (North Atlantic Treaty Organization) members, for discussion of common problems in the interests of the maintenance of peace and security in the North Atlantic area. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the "United States Group"), half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Committee on International Relations),[3] and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate [4] from Members of the Senate. Not more than seven of the appointees from the Senate shall be of the same political party.[5] The Chairman or Vice Chairman of the House delegation shall be a Member from the International Relations Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[6] Each delegation shall have a secretary. The secretaries of the Senate and House delegations shall be appointed, respectively, by the chairman of the Committee on Foreign Relations of the Senate and the chairman of

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[1] Sec. 4(c)(1) of Public Law 95-45 (91 Stat. 222) substituted "twenty-four" in lieu of "eighteen".

[2] The words "and when Congress is not in session," were deleted by Public Law 88-205.

[3] Sec. 4(c)(2) of Public Law 95-45 (91 Stat. 222) added the words to this point beginning with "not less than * * *".

[4] Sec. 4(c)(2) of Public Law 95-45 (91 Stat. 222) added the words "upon recommendations of the majority and minority leaders of the Senate".

[5] This sentence, which previously read, "Not more than five of the appointees from the respective Houses shall be of the same political party", was amended by Sec. 4(c)(3) of Public Law 95-45 (91 Stat. 222).

[6] This sentence was added by sec. 4(c)(4) of Public Law 94-45 (91 Stat. 222).

the Committee on Foreign Affairs of the House of Representatives. [7]

Sec. 2. There is authorized to be appropriated annually (1) [8] for the annual contribution of the United States toward the maintenance of the North Atlantic Assembly,[9] such sum as may be agreed upon by the United States Group and approved by such Assembly,[9] but in no event to exceed for any year an amount equal to 25 per centum of the total annual contributions made for that year by all members of the North Atlantic Treaty Organization toward the maintenance of such Assembly,[9] and (2) [8] $100,000, $50,000 for the House delegation and $50,000 for the Senate delegation,[10] or so much thereof as may be necessary, to assist in meeting the expenses of the United States group of the North Atlantic Assembly [9] for each fiscal year for which an appropriation is made, such appropriation to be dispersed on voucher to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation.

Sec. 3. The United States group of the North Atlantic Assembly [9] shall submit to the Congress a report for each fiscal year for which an appropriation is made, including its expenditures under such appropriation.

Sec. 4. The certificate of the Chairman of the House delegation and the Senate delegation of the North Atlantic Assembly [9] shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the North Atlantic Assembly.[9]

Sec. 5.[11] In addition to the amounts authorized by section 2, there is authorized to be appropriated $50,000 for fiscal year 1977 to meet the expenses incurred by the United States group in hosting the twenty-second annual meeting of the North Atlantic Assembly. In addition to the amounts authorized by section 2, there is authorized to be appropriated $450,000 for fiscal year 1984 to meet

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[7] Sec. 744 of Public Law 100-204 (101 Stat. 1396) added the two preceding sentences.

[8] Sec. 303 of Title II of the Department of State Appropriation Act, 1988 (sec. 101(a) of the Continuing Appropriations, 1988, Public Law 100-202; 101 Stat. 1329-23), inserted "annually (1)" in lieu of "annually" and added "(2)" after "and".

[9] "The North Atlantic Treaty Organization Parliamentary Conference" was changed to "North Atlantic Assembly" and "such Conference" was changed to "such Assembly" by Public Law 90-137 (81 Stat. 463).

[10] Sec. 303 of Title III (Public Law 100-202; 101 Stat.1329-23 amended the amounts authorized to be appropriated which formerly read "$50,000, $25,000 for the House delegation and $25,000 for the Senate delegation" (as authorized by Public Law 92-226). Prior to that authorization, the amounts were "$30,000, $15,000 for the House delegation and $15,000 for the Senate delegation". The Foreign Relations Authorization Act (Public Law 100-204; 101 Stat. 1396) had directed that sec. 2 be amended by substituting "$75,000" in lieu of "$50,000", and "$50,000" in lieu of "$25,000" for the House delegation. This amendment could not be executed because of the prior amendment by Public Law 100-202. This sentence was previously amended and restated by sec. 502(d) of Public Law 85-477 (72 Stat. 273).

In addition, sec. 303 provided the following permanent appropriation for delegation expenses:

"SEC. 303. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a total of $290,000 for each fiscal year to carry out (in accordance with the respective authorization amounts) paragraph (2) of the first section of Public Law 74-170, section 2(2) of Public Law 84-689, section 2 of Public Law 86-42, and section 2 of Public Law 86-420. These funds may be disbursed to each delegation, pursuant to vouchers in accordance with the applicable provisions of law, at any time requested by the Chairman of the delegation after that fiscal year begins." This sec. of Public Law 100-202 was subsequently amended by sec. 303 of Public Law 100-459 (102 Stat. 2207) which inserted "$340,000" in lieu of "$290,000", and added ", and section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985." after "Public Law 86-420."

[11] 22 U.S.C. 1928e. Sec. 5 was added by sec. 107 of the Foreign Relations Authorization Act, Fiscal Year 1977 (Public Law 94-350).

the expenses incurred by the United States group in hosting the thirty-first annual meeting of the North Atlantic Assembly.[12] Amounts appropriated under this section are authorized to remain available until expended.

[12] Sec. 109(a) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98–164; 97 Stat. 1019) added this sentence. For complete text of sec. 109(b), see Legislation on Foreign Relations Through 1988, vol. II, page 113.

e. United States-European Community Interparliamentary Group—Appropriations Authorization

Partial text of Public Law 98-164 [Department of State Authorization Act, Fiscal Years 1984 and 1985; H.R. 2915], 97 Stat. 1017, approved November 22, 1983, as amended by Public Law 99-93 [H.R. 2068], 99 Stat. 405, approved August 16, 1985; by Public Law 99-415 [Anglo-Irish Agreement Support Act of 1986, H.R. 4329], 100 Stat. 949, approved September 19, 1986; and by Public Law 100-204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, H.R. 1777], 101 Stat. 1331, approved December 22, 1987

AN ACT To authorize appropriations for fiscal years 1984 and 1985 for the Department of State, the United States Information Agency, the Board for International Broadcasting, the Inter-American Foundation, and the Asia Foundation, to establish the National Endowment for Democracy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—DEPARTMENT OF STATE

* * * * * * *

INTERPARLIAMENTARY GROUPS

Sec. 109. (a) * * *

(b) * * *

(c) [1] There are authorized to be appropriated for each fiscal year $50,000 for expenses of United States participation in the United States-European Community Interparliamentary Group.

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[1] Sec. 303 of the Department of State Appropriations Act, 1989 (Public Law 100-459, 102 Stat. 2207) extensively amended subsec. (c), to take effect October 1, 1988. It formerly read as follows:

"Of the amounts authorized to be appropriated for each fiscal year for 'International Organizations and Conferences' $50,000 may be used for expenses of United States participation in the United States-European Community Interparliamentary Group."

Subsec. (c) was amended previously by sec. 7(b) of Public Law 99-415, 100 Stat. 949.

f. Requirements Relating to Funds for International Organizations and Conferences

Partial Text of Public Law 99-415 [Anglo-Irish Agreement Support Act of 1986; H.R. 4329], 100 Stat. 947, approved September 19, 1986

AN ACT To authorize United States contributions to the International Fund established pursuant to the November 15, 1985, agreement between the United Kingdom and Ireland, as well as other assistance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 7. REQUIREMENTS RELATING TO FUNDS FOR "INTERNATIONAL ORGANIZATION AND CONFERENCES".

(a) DISBURSEMENTS, AUDITS, AND REPORTS.—The provisions relating to disbursements on vouchers, audits, and submission of reports with respect to expenditures pursuant to the Joint Resolution of July 11, 1956 (Public Law 689),[1] shall also apply with respect to expenditures pursuant to section 109(c) [2] of the Act of November 22, 1983 (Public Law 98-164).

(b) FUNDS SUBJECT TO REQUIREMENTS.—That section is amended—

(1) by striking out "In addition to" and inserting in lieu thereof "Of";

(2) by striking out "by section 102(2)" and all that follows through "1985" and inserting in lieu thereof "for each fiscal year";

(3) by inserting "may be used" before "for expenses"; and

(4) by striking out all that follows "participation in" through "such as".

st a* * * * * * *

[1] 22 U.S.C. 1928a-1928e.

[2] 97 Stat. 1019. See preceding page for text of sec. 109(c).

3. International Claims Settlement Acts

a. International Claims Settlement Act of 1949, as amended [1]

Public Law 81-455 [H.R. 4406], 64 Stat. 12, approved March 10, 1950, as amended by Public Law 83-242 [H.R. 5742], 67 Stat. 506, approved August 8, 1953; Reorganization Plan No. 1, effective July 1, 1954, 19 F.R. 3985, 68 Stat. 1279; by Public Law 84-285 [H.R. 6382], 69 Stat. 562, approved August 9, 1955; by Public Law 85-604 [S. 3557], 72 Stat. 527, approved August 8, 1958; by Public Law 85-791 [H.R. 6788], 72 Stat. 941 at 951, approved August 28, 1958; by Public Law 88-666 [H.R. 12259], 78 Stat. 1110, approved October 16, 1964; by Public Law 89-554 [H.R. 10104], 80 Stat. 378 at 656, approved September 6, 1966; by Public Law 89-559 [H.R. 10104], 80 Stat. 378 at 656, approved November 6, 1966; by Public Law 90-421 [H.R. 9063], 82 Stat. 420, approved July 4, 1968; by Public Law 91-167 [H.R. 11711], 83 Stat. 435, approved December 24, 1969; by Public Law 93-460 [H.R. 13261], 88 Stat. 1386, approved October 20, 1974; by Public Law 94-542 [S. 3621], 90 Stat. 2509, approved October 18, 1976; by Public Law 96-445 [H.R. 6440], 94 Stat. 1891, approved October 13, 1980; by Public Law 96-606 [H.R. 5737], 94 Stat. 3534, approved December 28, 1980; by Public Law 97-164 [H.R. 4482], 96 Stat. 25 at 49, approved April 2, 1982; by Public Law 99-451 [H.R. 5506], 100 Stat. 1138, approved October 8, 1986; by Public Law 100-204 [Foreign Relations Authorization Act, Fiscal Years 1988 and 1989; H.R. 1777], 101 Stat. 1331 at 1350, approved December 22, 1987; and by Public Law 100-352 [Review of Cases by the Supreme Court; S. 952], 102 Stat. 662 at 664, approved June 27, 1988

AN ACT To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Claims Settlement Act of 1949".

TITLE I [2]

Sec. 2. For the purposes of this Title—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(b) The term "Yugoslav Claims Settlement of 1948" means the agreements between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regarding pecuniary claims of the United States and its nationals, signed July 19, 1948.

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[1] 22 U.S.C. 1621-1643k.

[2] Designated "Title I" by Public Law 84-285 (69 Stat. 562).

Sec. 3. (a) [3] * * * [Repealed—1966]
(b) [3] * * * [Repealed—1966]
(c) The Commission [4] may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may

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[3] Subsecs. (a) and (b) were repealed by sec. 8(a) of Public Law 89-554 (80 Stat. 656).

[4] The International Claims Commission was abolished and its functions were transferred to the Foreign Claims Settlement Commission of the United States by Reorganization Plan No. 1, 1954, effective July 1, 1954, 19 F.R. 3985, 68 Stat. 1279. Section 1 of Reorganization Plan No. 1 read:

"FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

"SECTION 1. *Establishment of Commission.*—There is hereby established the Foreign Claims Settlement Commission of the United States, hereinafter referred to as the Commission. The Commission shall be composed of three members, who shall each be appointed by the President by and with the advice and consent of the Senate, hold office during the pleasure of the President, and receive compensation at the rate of $15,000 per annum. The President shall from time to time designate one of the members of the Commission as the Chairman of the Commission, hereinafter referred to as the Chairman. Two members of the Commission shall constitute a quorum for the transaction of the business of the Commission."

The Foreign Claims Settlement Commission was transferred by Public Law 96-209 (94 Stat. 96) to the Department of Justice. Public Law 96-209 provides the following:

"SEC. 101. The Foreign Claims Settlement Commission of the United States, established under Reorganization Plan Numbered 1 of 1954, is hereby transferred to the Department of Justice as a separate agency within that Department.

"SEC. 102. All functions, powers, and duties of the Foreign Claims Settlement Commission established by Reorganization Plan Numbered 1 of 1954 are hereby transferred with the Commission, together with personnel, assets, liabilities, unexpended balances of appropriations, authorizations, allocations, and other funds held, used, available, or to be made available in connection with the statutory functions of the Commission. The Commission shall continue to perform its functions as provided by the War Claims Act of 1948, as amended, the International Claims Settlement Act of 1949, as amended, and Reorganization Plan Numbered 1 of 1954.

"SEC. 103.(a) The Commission shall be composed of a Chairman and two members. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, to serve on a full-time basis for a term of three years, and compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(b) The other members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, and serve on a part-time basis, and be compensated on a per diem basis at a rate of compensation equivalent to the daily rate for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day that such member is employed in the actual performance of official business of the Commission as may be directed by the Chairman. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

"(c) The terms of Office of the Chairman and members of the Commission shall be for three years, except the Chairman and members first appointed after the enactment of this subsection shall be appointed to terms ending respectively September 30, 1982, September 30, 1981, and September 30, 1980. The incumbent of any such office may continue to serve until a successor takes office.

"(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, members of the Foreign Claims Settlement Commission who are serving on the effective date of this Act, shall continue to serve in their same capacities until the expiration of the terms to which they were appointed.

"SEC. 104. The Commission is authorized, in accordance with civil service laws and in accordance with title 5 of the United States Code, to appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. The Commission is authorized to employ experts and consultants in accordance with section 3109 of title 5 of the United States Code, without compensation or at rates of compensation not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5 of the United States Code. Notwithstanding any other provision of law, the Commission is further authorized to employ nationals of other countries who may possess special knowledge, languages, or other expertise necessary to assist the Commission. The Commission is authorized to pay expenses of packing, shipping, and storing personal effects of personnel of the Commission assigned abroad, and to pay allowances and benefits similar to those provided by title IX of the Foreign Service Act of 1946, as amended. The Commission is authorized, with the consent of the head of any other department or agency of the Federal Government, to utilize the facilities and services of such department or agency in carrying out the functions of the Commission. Officers and employees of any department and agency of the Federal Government may, with the consent of the head of such department or agency, be assigned to assist the Commission in carrying out its functions. The Commission shall reimburse such department and agency for the pay of such officers or employees.

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delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this Title. Any member of the Commission may be removed by the Secretary of State,[5] upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through the Secretary of State,[5] to the Congress concerning its operations under this Title. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together and with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case. No member of such Commission shall be appointed after the effective date of this Title until such Commission is reorganized by further Act of Congress but acting members may be designated by the President as provided by this section, who shall receive no compensation from the funds appropriated by H.R. 6200 for defraying the expenses of such Commission.[6]

Sec. 4. (a) The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof. In the decision of claims under this Title, the Commission shall apply the following in the following order:

"SEC. 105. All functions, powers, and duties not directly related to adjudicating claims are hereby vested in the Chairman, including the functions set forth in section 3 of Reorganization Plan Numbered 1 of 1954 and the authority to issue rules and regulations.

"SEC. 106. The Attorney General shall provide necessary administrative support and services to the Commission. The Chairman shall prepare the budget requests, authorization documents, and legislative proposals for the Commission within the procedures established by the Department of Justice, and the Attorney General shall submit these items to the Director of the Office of Management and Budget as proposed by the Chairman.

"SEC. 107. Nothing in this Act shall be construed to diminish the independence of the Commission in making its determinations on claims in programs that it is authorized to administer pursuant to the powers and responsibilities conferred upon the Commission by the War Claims Act of 1948, as amended, the International Claims Settlement Act of 1949, as amended, and Reorganization Plan Numbered 1 of 1954. The decisions of the Commission with respect to claims shall be final and conclusive on all questions of law and fact, and shall not be subject to review by the Attorney General or any other official of the United States or by any court by mandamus or otherwise."

[5] The functions of the Secretary of State under these sentences were abolished and transferred to the Foreign Claims Settlement Commission by Reorganization Plan No. 1, 1954. Public Law 89-348 (79 Stat. 1310) modified this reporting requirement from semiannual to annual submission.

[6] H.R. 6200 is the Supplemental Appropriation Act, 1954, Act of Aug. 7, 1953, (67 Stat. 418).

(1) The provisions of the applicable claims agreement as provided in this subsection.

(2) the applicable principles of international law, justice, and equity. In determining the value of a claim under international law, the Commission shall award the fair market value of the property as of the time of the taking by the foreign government involved (without regard to any action or event that occurs after the taking), except that the value of the claim shall not reflect any diminution in value attributable to actions which are carried out, or threats of action which are made, by the foreign government with respect to the property before the taking. Fair market value shall be ascertained in accordance with the method most appropriate to the property taken and equitable to the claimant, including—

(i) market value of outstanding equity securities;

(ii) replacement value;

(iii) going-concern value (which includes consideration of an enterprise's profitability); and

(iv) book value.

In the case of any claim for losses in a service industry, the appropriate basis of valuation shall be presumed to be that referred to in clause (iii). For purposes of the preceding sentence, the term "service" means economic activity the output of which is other than tangible goods.[7]

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this Title. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this Title shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fee and mileage that are paid witnesses in the courts of the United States. In case of disobedience

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[7] Sec. 4(a) was amended by sec. 1(a) of Public Law 99-451 (100 Stat. 1138) which added the text to subpar. (2), beginning with "In determining the value of a claim . . . " to this point.

to a subpena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letter rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this Title, shall forfeit all rights under this Title, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f) [8] No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Com-

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[8] Subsec. (f) was amended by sec. 1 of Public Law 90-421 (82 Stat. 420). It formerly read as follows:

"In connection with any claim decided by the Commission pursuant to this Title in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided, however,* That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon

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mission under this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title, on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this title. Any and all payments required to be made by the Secretary of the Treasury under this title pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive of all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this title.

(k) [9] In exercising authority granted after the date of the enactment of this subsection under this or any other Act, the Commission, in determining the value of claims of the Government of the United States or of nationals of the United States (as defined in this Act or such other Act) against any foreign government for losses arising from the nationalization or other taking of property, shall comply with the principles set forth in subsection (a)(2) of this section.

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conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereof, any such person shall forfeit all rights under this title."

[9] Public Law 99-451 (100 Stat. 1138) added subsec. (k).

Sec. 5. The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this Title. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this Act for transmission to the foreign government concerned.

Sec. 6. The Commission shall complete its affairs in connection with settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954;[10] *Provided,* That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be affected under the provisions of this legislation.

Sec. 7. (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this Title, an amount not exceeding the principal of each award, plus accrued interests on such awards as bear interest, certified pursuant to section 5 of this Title, in accordance with the award. Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b)[11] (1) There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 5[12] per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(2)[11] The Secretary of the Treasury shall deduct from any amounts covered, subsequent to the date of enactment of this paragraph, into any special fund, created pursuant to section 8, 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this Title. The amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this Title shall be made only to the person or persons on behalf of whom the award is made, except that—

(1)[13] if any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, pay-

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[10] Public Law 83-242 (67 Stat. 506) substituted "December 31, 1954;" for "not more than four years following enactment of this Act;" (March 10, 1956).

[11] Subsec. (b) was amended by sec. 2 of Public Law 90-421 (82 Stat. 420) by inserting "(1)" after the subsection letter and adding at the end thereof, new paragraph (2).

[12] Public Law 83-242 (67 Stat. 506) substituted "5" for "3".

[13] Par. (1) was amended by sec. 3 of Public Law 90-421 (82 Stat. 420). Par. (1) formerly read as follows:

"(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided,* That if the total award is not over $500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;".

ment shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirement of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Comptroller General of the United States to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such award, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury, or the Comptroller General of the United States, as the case may be, shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents or employees with respect to such payment.

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this Title.

(f) Nothing in this Title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

Sec. 8. (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claims Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Title. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this Title shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby

permanently appropriated for the making of the payments authorized by section 7 of this Title.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of $17,000,000 being the amount paid by the Government of the Federal People's Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Title.

(c)[14] The Secretary of the Treasury is authorized and directed out of the sums covered, prior to the date of enactment of subsection (e) of this section, into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b)(1) of this Title—

(1) to make payments in full of the principal of awards of $1,000 or less, certified pursuant to section 5 of this Title;

(2) to make payments of $1,000 on the principal of each award of more than $1,000 in principal amount, certified pursuant to section 5 of this Title;

(3) to make additional payment of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than $1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund of the Government of the Federal People's Republic of Yugoslavia to the extent required under article 1(c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other

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[14] Subsec. (c) was amended by sec. 4 of Public Law 90-421 (82 Stat. 420). It formerly read as follows:

"The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b) of this Title—"

official or department, agency, or establishment of the United States.

(e) [15] Except as provided in subsection (f),[16] the Secretary of the Treasury is authorized and directed out of sums covered, subsequent to the date of enactment of this subsection, into any special fund created pursuant to this section to make payment on account of awards certified by the Commission pursuant to this title with respect to claims included within the terms of a claims settlement agreement concluded between the Government of the United States and a foreign government as described in subsection (a) of section 4 of this title, as follows and in the following order of priority:

"(1) Payment in the amount of $1,000 or the principal amount of the award, whichever is less;

"(2) Thereafter, payments from time to time on account of the unpaid principal balance of each remaining award which shall bear to such unpaid principal balance the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid principal balance of all such awards; and

"(3) Thereafter, payments from time to time on account of the unpaid balance of each award of interest which shall bear to such unpaid balance of interest, the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid balance of interest of all such awards."

(f) [17] (1) Out of sums covered after May 11, 1979, into the special fund created pursuant to this section to receive funds paid by the People's Republic of China, the Secretary of the Treasury is authorized and directed to make payments on account of awards certified by the Commission pursuant to title V with respect to claims included within the terms of the Agreement Between the Government of the United States of America and the Government of the People's Republic of China Concerning the Settlement of Claims, signed on May 11, 1979, in the following order of priority:

(A) Payment in the amount of $1,000 or the principal amount of the award, whichever is less.

(B) Thereafter, except as provided in paragraph (2), to the extent there remain unpaid principal balances on awards, payments from time to time on account of the unpaid principal balance of each remaining award which bear to such unpaid principal balance the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid principal balance of all such awards.

(C) Thereafter, payments from time to time on account of the unpaid balance of each award of interest which bear to such unpaid balance of interest the same proportion as the total amount available for distribution at the time such payments

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[15] Subsec. (e) was added by sec. 5 of Public Law 90-421 (82 Stat. 420).
[16] The words to this point in subsec. (e) were added by Public Law 96-445 (94 Stat. 1891).
[17] Subsec. (f) was added by Public Law 96-445 (94 Stat. 1891).

are made bears to the aggregate unpaid balance of interest of all such awards.

(2)(A) For the purpose of computing the payments to be made under paragraph (1) to any claimant which was an incorporated business enterprise on the date of nationalization or other taking of property, the award certified by the Commission under title V shall be reduced by the amount of Federal tax benefits derived by such claimant on account of the losses upon which such claim was based, but in no case shall payments be reduced below the amount paid to such claimant on account of such claim before the date of the enactment of this subsection. For purposes of this subparagraph, such Federal tax benefits shall be the amount by which the claimant's taxes in any prior taxable year or years under chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code of 1939, or subtitle A of the Internal Revenue Code of 1954, were decreased with respect to the loss or losses upon which the claim was based. The sum of the amounts which would otherwise be payable but for this paragraph which are not paid to any such claimant shall be aggregated, and the Secretary of the Treasury is authorized and directed to make payments out of such aggregated sums in accordance with subparagraph (B).

(B) To the extent that there remain unpaid principal balances on awards to claimants which were, on the date of nationalization or other taking of property, nonprofit organizations operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes (after payments made to such nonprofit organizations pursuant to subparagraphs (A) and (B) of paragraph (1) are taken into account), the Secretary of the Treasury is authorized and directed to make payments from time to time on account of the unpaid principal balance of each remaining award to such nonprofit organizations which bear to such unpaid principal balance the same proportion as the total sums aggregated pursuant to subparagraph (A) at the times such payments are made bear to the aggregate unpaid principal balance of all such awards to nonprofit organizations.

(g) [18] The Secretary of the Treasury is authorized and directed to invest the amounts held respectively in the "special funds" established by this section in public debt securities with maturities suitable for the needs of the separate accounts and bearing interest at rates determined by the Secretary, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest earned on the amounts in each special fund shall be used to make payments, in accordance with subsection (c), on awards payable from that special fund.

Sec. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Commission to carry out its functions under this Title.

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[18] Subsec. (g) was added by sec. 142 of Public Law 100-204 (101 Stat. 1350).

TITLE II [19]

VESTING AND LIQUIDATION OF BULGARIAN, HUNGARIAN, AND RUMANIAN PROPERTY

Sec. 201. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "Property" means any property, right, or interest.

(3) "Treaty of peace," with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

Sec. 202. (a) In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release, when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended,[20] and which at the date of vesting was owned directly or indi-

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[19] 22 U.S.C. 1631-1631o. Title II was added by Public Law 84-285 (69 Stat. 562).

[20] 40 Stat. 411; 50 U.S.C. App. 1.

rectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(c) The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court.

(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended,[21] or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section.

Sec. 203. Whenever shares of stock or other beneficial interest in any corporation, association, or company or trust are vested in any officer or agency designated by the President under this title, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel such shares of stock or other beneficial interest upon its, his, or their books and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the designee of the President, or otherwise as such designee shall require.

Sec. 204. Any vesting order, or other order or requirement issued pursuant to this title, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of such property as may be covered by such order or requirement; and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment so filed, registered, or recorded.

Sec. 205. Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assign-

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[21] 5 F.R. 1400; 3 CFR, Cum. Supp., page 645.

ment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Sec. 206. The district courts of the United States are given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this title, with a right of appeal from the final order of decree of such court as provided in chapter 83 [22] of title 28, United States Code.

Sec. 207. (a) Any person who has not filed a notice of claim under subsection (b) of this section may institute a suit in equity for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such suit, to which said designee shall be made a party defendant, shall be instituted in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which the claimant resides, or, if a corporation, where it has its principal place of business, by the filing of a complaint which alleges—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; [23] and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

If the court finds in favor of the claimant, it shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of such property, or the net proceeds thereof, held by said designee or the portion thereof to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such property, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

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[22] Sec. 6(g) of Public Law 100-352 (102 Stat. 664) inserted "chapter 83" in lieu of "sections 1252, 1254, 1291, and 1292."

[23] 5 F.R. 1400; 3 CFR, Cum. Supp., page 645.

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim as provided in section 2112 of title 28, United States Code.[24] The court may enter judgment affirming the order of the designee; or, upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part, and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee or a final judgment or decree, shall be entered against the claimant, or the claim or suit otherwise terminated.

(c) The sole relief and remedy of any person having any claim to any property vested pursuant to section 202(a), except a person claiming under section 216, shall be that provided by the terms of subsections (a) and (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President.[25] The claim of any person based on his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under sec. 202(a) shall be allowable under subsec. (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a

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[24] The two foregoing sentences were revised by Public Law 85-791 (72 Stat. 951). They formerly read as follows:

"Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy must be served on the said designee. Within forty-five days after service of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall certify and file with the court a transcript of the entire record of the proceedings with respect to such claim."

[25] This sentence was amended by sec. 6 of Public Law 90-421 (82 Stat. 421). It formerly read as follows:

"The sole relief and remedy of any person having any claim to any property vested pursuant to sec. 202(a) shall be that provided by the terms of subsec. (a) or (b) of this section, and in any event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President."

foreign country shall be satisfied except after certification by the Department of State that the country of the national accords protection to nationals of the United States in similar types of cases.

(d) the designee of the President may retain or recover from any property, or the net proceeds thereof, returned pursuant to subsection (a) or (b) of this section an amount not exceeding that expended or incurred by him for the conservation, preservation, or maintenance of such property or proceeds.

Sec. 208. (a) Any property vested in the designee of the President pursuant to section 202(a), or the net proceeds thereof, shall be equitably applied by such designee in accordance with this section to the payment of debts owed by the person who owned such property immediately prior to its vesting in such designee. No debt claim shall be allowed under this section—

(1) if it is asserted against Bulgaria, Hungary, or Rumania (including the government or any political subdivisions, agencies, or instrumentalities thereof); or

(2) if it is based upon an obligation expressed or payable in any currency other than the currency of the United States; or

(3) if it was not due and owing—

(A) on October 9, 1940, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Rumania;

(B) on March 4, 1941, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Bulgaria; or

(C) on March 13, 1941, in the event that the property in respect of which such debt claim is filed was owned immediately prior to vesting be a national of Hungary.

Any defense to the payment of such claim which would have been available to the debtor shall be available to the designee, except that the period from and after December 7, 1941, shall not be included for the purpose of determining the applicability of any statute of limitations. Debt claims allowable under this section shall include only those of natural persons who were citizens of the United States at the dates their debtors became obligated to them; those of other natural persons who are and have been continuously since December 7, 1941, residents of the United States; those of corporations organized under the laws of the United States of any State, Territory, or possession thereof, or the District of Columbia; and those acquired by the designee of the President under this title. Successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The designee of the President under this title shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of one year from the date of the last vesting in the designee of the President of any property of a debtor in respect to whose debts the date is fixed. No debt shall be paid prior to expiration of

one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or proceeds in respect of which a suit or proceeding for return pursuant to this title is pending.

(c) The designee shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part. The determination of the designee that a claim is within either paragraph (1) or (2) of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property owned by the debtor immediately prior to its vesting in the designee of the President, as shall remain after deduction of (1) the amount of the expenses of the designee (including both expenses in connection with such property or proceeds thereof, and such portion as the designee shall fix of his other expenses), and of taxes, as defined in section 212, paid by the designee in respect to such property or proceeds; and (2) such amount, if any, as the designee may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the designee, ratable payments shall be made in accordance with subsection (g) of this section to the extent permitted by the money available and additional payments shall be made whenever the designee shall determine that substantial further money has become available, through liquidation of any such property or otherwise. The designee shall not be required, through any judgment of any court, levy of execution, or otherwise, to sell or liquidate any property vested in him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the designee's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the designee as defendant. Such complaint shall be served on the designee. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, and the determination of the designee with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered

to and excluded by the designee, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the designee's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the designee shall assign priorities in accordance with subsection (g) of this section. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the designee as defendant. A copy of such complaint shall be served upon the designee and on each claimant named in the schedule. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, any findings or other determinations made by the designee with respect thereto, and the schedule prepared by the designee. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the designee pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the designee and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) of this section, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 3466 and 3468 of the Revised Statutes (31 U.S.C., secs. 191 and 193), except as provided in subsection (h) of this section; (3) all other claims for services rendered; for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) of this section, payment may be made, permits payment in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession

thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the designee of the President under this title.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property vested in the designee under section 202(a), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section. No person asserting any interest, right, or title in any property or proceeds acquired by the designee shall be barred from proceeding pursuant to this title for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or proceeds be deemed to have been waived solely by reason of such proceeding. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property from the designee shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property prior to its vesting in the designee. Payment by the designee to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

Sec. 209. The officer or agency designated by the President under this title to entertain claims under section 207(b) and section 208 shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by section 207(b) and section 208, may be exercised through subordinate officers designated by such officer or agency.

Sec. 210. No suit may be instituted pursuant to section 207(a) after the expiration of one year from the date of vesting of the property in respect of which relief is sought. No return may be made pursuant to section 207(b) unless notice of claim has been filed within one year from the date of vesting of the property in respect of which the claim is filed.

Sec. 211. No property or proceeds shall be returned under this title, nor shall any payment be made or judgment awarded in respect of any property vested in any officer or agency designated by the President under this title unless satisfactory evidence is furnished to said designee, or the court, as the case may be, that the aggregate of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services rendered in connection with such return or payment or judgment does not exceed 10 per centum of the value of such property or proceeds or of such payment. Any agent, attorney at law or in fact, or representative, believing that the aggregate of the fees should be in excess of such 10 per centum may, in the case of any return of, or the making of any

payment in respect of, such property or proceeds by the President or such officer or agency as he may designate, petition the district court of the United States for the district in which he resides for an order authorizing fees in excess of 10 per centum and shall name such officer or agency as respondent. The court hearing such petition or a court awarding any judgment in respect of any such property or proceeds, as the case may be, shall approve an aggregate of fees in excess of 10 per centum of the value of such property or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved under this section, or retaining for more than thirty days any portion of a fee, accepted prior to such approval, in excess of the fee as approved, shall be guilty of a violation of this title.

Sec. 212. (a) The vesting in any officer or agency designated by the President under this title of any property or the receipt by such designee of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period before or after such vesting.

(b) The officer or agency designated by the President under this title shall, notwithstanding the filing of any claim or the institution of any suit under this title, pay any tax incident to any such property, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, earnings, increment, or proceeds are held by such designee, unless they are returned pursuant to this title without payment of such tax by the designee. Every such tax shall be paid by the designee to the same extent, as nearly as may be deemed practicable, as though the property had not been vested, and shall be paid only out of the property, or earnings, increment, or proceeds thereof, to which they are incident or out of other property acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or the earnings, increment, or proceeds thereof while held by the designee except with his consent. Where any property is transferred, otherwise than pursuant to section 207(a) or 207(b) hereof, the designee may transfer the property free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property in the hands of the designee.

(c) Subject to the provisions of subsection (b) of this section, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the designee with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessments, collection, refund, or credit of Federal taxes shall be suspended with respect to any vested property or the earnings, increment, or proceeds thereof,

while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate, and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the designee.

Sec. 213. Prior to covering the net proceeds of liquidation of any property into the Treasury pursuant to section 202(a), the designee of the President under this title shall determine—

(1) the amount of his administrative expenses attributable to the performance of his functions under this title with respect to such property and the proceeds thereof. The amount so determined, together with an amount not exceeding that expended or incurred for the conservation, preservation, or maintenance of such property and the proceeds thereof, and for taxes in respect of same, shall be deducted and retained by the designee from the proceeds otherwise covered into the Treasury; and

(2) that the time for the institution of a suit under section 207(a), for the filing of a notice of claim under section 207(b), and for the filing of debt claims under section 208 has elapsed.

The determinations of the designee under this section shall be final and conclusive.

Sec. 214. No property conveyed, transferred, assigned, delivered, or paid to the designee of the President under this title, or the net proceeds thereof, shall be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court, except as provided in this title.

Sec. 215. Whoever shall willfully violate any provision of this title or any rule or regulation issued hereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President or of a designee of the President under this title, issued in compliance with the provisions of this title shall be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both.

Sec. 216.[26] (a) Notwithstanding any other provision of this Act or any provision of the Trading With the Enemy Act, as amended, any person (1) who was formerly a national of Bulgaria, Hungary, or Rumania, and (2) who, as a consequence of any law, decree, or regulation of the nation of which he was a national discriminating against political, racial or religious groups, at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated enjoyed full rights of citizenship under the law of such nation, shall be eligible hereunder to receive the return of his interest in property which was vested under section 202(a) hereof or under the Trading With the Enemy Act, as amended, as the

[26] Sec. 216 was added by sec. 7 of Public Law 90-421 (82 Stat. 421).

property of a corporation organized under the laws of Bulgaria, Hungary, or Rumania if 25 per centum or more of the outstanding capital stock of such corporation was owned at the date of vesting by such persons and nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan, or if such corporation was subjected after December 7, 1941, under the laws of its country, to special wartime measures directed against it because of the enemy character of some or all of its stockholders; and no certificate by the Department of State as provided under section 207(c) hereof shall be required for such persons.

(b) An interest in property vested under the Trading With the Enemy Act, as amended, as the property of a corporation organized under the laws of Bulgaria, Hungary, or Rumania shall be subject to return under subsection (a) of this section only if a notice of claim for the return of any such interest has been timely filed under the provisions of section 33 of that Act, provided that application may be made therefore within six months after the date of enactment hereof. In the event such interest has been liquidated and the net proceeds thereof transferred to the Bulgarian Claims Fund, Hungarian Claims Fund, or Rumanian Claims Fund, the net proceeds of any other interest representing vested property held in the United States Treasury may be used for the purpose of making the return hereunder.

(c) Determinations by the designee of the President or any other officer or agency with respect to claims under this section, including the allowance or disallowance thereof, shall be final and shall not be subject to review by any court.

TITLE III [27]

CLAIMS AGAINST BULGARIA, HUNGARY, RUMANIA, ITALY, AND THE SOVIET UNION

Sec. 301. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "National of the United States" means (A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947,[28] which came into force between that country and the United States on September 15, 1947.

(4) "Memorandum of Understanding" means the Memorandum of Understanding between the United States and Italy re-

[27] 22 U.S.C. 1641-1641q. Title III was added by sec. 3 of Public Law 84-285 (69 Stat. 570).
[28] 61 Stat., pt. 2.

garding Italian assets in the United States and certain claims of nationals of the United States, signed at Washington, District of Columbia, August 14, 1947 (61 Stat. 3962).

(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

(6) "Litvinov Assignment" means (A) the communications dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated November 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November 15, 1933, assigning certain assets to the Government of the United States.

(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

(8) "Commission" means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).[29]

(9) "Property" means any property, right, or interest.

Sec. 302. (a) There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hungarian Claims Fund, the Rumanian Claims Fund, the Italian Claims Funds, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The Secretary of the Treasury shall cover into the Italian Claims Fund the sum $5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding.[30] The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Depart-

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[29] 22 U.S.C. 1622 note.
[30] 61 Stat. 3962.

ment in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(b)[31] The Secretary of the Treasury shall cover into each of the Bulgarian and Rumanian Claims Funds such sums as may be paid by the Government of the respective country pursuant to the terms of any claims settlement agreement between the Government of the United States and the Government of such country.

(c)[32] The Secretary of the Treasury shall cover into the Hungarian Claims Fund, such sums as may be paid to the United States by the Government of Hungary pursuant to the terms of the United States-Hungarian Claims Agreement of March 6, 1973.[33]

Sec. 303. The Commission shall receive and determine in accordance with the applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania.[34] Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania;

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1984, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947;

(4)[35] pays effective compensation for the nationalization, compulsory liquidation, or other taking of property of nationals of the United States in Bulgaria and Rumania, between August 9, 1955, and the effective date of the claims agreement between the respective country and the United States; and

(5)[36] pay effective compensation for the nationalization, compulsory liquidation, or other taking of property of nationals of the United States in Hungary, between August 9, 1955, and the date the United States-Hungarian Claims Agreement of March 6, 1973, enters into force.[37]

Sec. 304. (a) The Commission shall receive and determine, in accordance with the Memorandum of Understanding[37] and applica-

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[31] Subsec. (b) was added by sec. 8 of Public Law 90-421 (82 Stat. 422).
[32] Subsec. (c) was added by sec. 1(1) of Public Law 93-460 (88 Stat. 1386).
[33] TIAS 7569; 24 UST 522.
[34] 61 Stat. pt. 2.
[35] Par. (4) was added by sec. 10 of Public Law 90-421 (82 Stat. 422).
[36] Par. (5) was added by sec. 1(3) of Public Law 93-460 (88 Stat. 1386).
[37] 61 Stat. 3902.

ble substantive law including international law, the validity and amount of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy. Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to section 302 of this Act, the Commission shall determine the validity and amount of any claim under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such claims, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund in accordance with the provisions of section 310 of this Act, notwithstanding that the period of time prescribed in section 316 of this Act for the settlement of all claims under this section may have expired.[38]

(b)[39] The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: *Provided,* That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

(c)[39] The Commission shall receive and determine, or redetermine as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were nationals of the United States on September 3, 1943, and the date of enactment of this subsection, against the Government of Italy which arose out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, in territory ceded by Italy pursuant to the treaty of peace with Italy: *Provided,* That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy or subsection (a) of this section.

(d)[39] Within thirty days after enactment of this subsection, or within thirty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under subsections (b) and (c) of this section, whichever date is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed with the Commission, which limit shall not be more than six months after such publication.

(e)[39] The Commission shall certify awards on claims determined pursuant to subsection (b) and (c) of this section to the Secretary of the Treasury for payment out of remaining balances in the Italian

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[38] The last sentence in this subsection was added by Public Law 85-604.

[39] Subsecs. (b), (c), (d), (e), (f) were added by sec. 11 of Public Law 90-421 (82 Stat. 422).

Claims Fund in accordance with the provisions of section 310 of this title, after payment in full of all awards certified pursuant to subsection (a) of this section.

(f)[39] After payment in full of all awards certified to the Secretary of the Treasury pursuant to subsections (a) and (e) of this section, the Secretary of the Treasury is authorized and directed to transfer the unobligated balance in the Italian Claims Fund into the War Claims Fund created by section 13 of the War Claims Act of 1948, as amended.

Sec. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

Sec. 306. (a) Within sixty days after the date of enactment of this title, or within sixty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (1), (2), or (3) of section 303 of this title, whichever date is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under this title, which limit shall not be more than one year after such publication, except that with respect to claims under section 305 this limit shall not exceed six months.

(b)[40] Within thirty days after enactment of this subsection or the enactment of legislation making appropriations to the Commission

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[40] Subsec. (b) was added by sec. 12 of Public Law 90-421 (82 Stat. 423).

for payment of administrative expenses incurred in carrying out its functions under paragraph (4) of section 303 of this title, whichever is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under paragraph (4) of section 303 of this title, which limit shall not be more than six months after such publication.

(c)[41] Within thirty days after enactment of this subsection, or thirty days after enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (5) of section 303, whichever date is later, the Commission shall publish in the Federal Register the time when, and the limit of time within which, claims may be filed with the Commission under paragraph (5) of section 303, which limit shall not be more than six months after such publication.

(d)[41] Notwithstanding any other provision of this section, any national of the United States who was mailed notice by any department or agency of the Government of the United States with respect to filing a claim against the government of Hungary arising out of any of the failures referred to in paragraph (1), (2), or (3) of section 303 of this title, and who did not receive the notice as the result of administrative error in placing a nonexistent address on the notice, may file with the Commission a claim under any such paragraph. The Commission shall publish in the Federal Register, within thirty days after enactment of this paragraph, when the limit of time within which any such claim may be filed with the Commission, which limit shall not be more than six months after such publication.

Sec. 307. The amount of any award made pursuant to this title based on a claim of a national of the United States other than the national of the United States to whom the claim originally accrued shall not exceed the amount of the actual consideration last paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less.

Sec. 308. The Commission shall as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 309. All payments authorized under this title shall be disbursed exclusively from the claims funds attributable to the country with respect to which the claims are allowed pursuant to this title. All amounts covered into the Treasury to the credit of the claims funds created by section 302 are hereby permanently appropriated for the making of the payments authorized under this title.

Sec. 310. (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to section 305(a)(1) and each award of $1,000 or less made pursuant to section 303 or 304;

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[41] Subsecs. (c) and (d) were added by sec. 1(4) of Public Law 93-460 (88 Stat. 1386).

(2) Payment in full of the principal amount of each award of $1,000 or less made pursuant to section 305(a)(2);

(3) Payment in the amount of $1,000 on account of the principal of each award or more than $1,000 in amount made pursuant to section 303, 304, or 305(a)(2);

(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rate payments from the remainder of such fund then available for distribution on account of accrued interest on such award as bear interest.

(6)[42] Whenever the Commission is authorized to settle claims by the enactment of paragraph (4) of section 303 of this title with respect to Rumania and Bulgaria, no further payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission pursuant to paragraph (1), (2), or (3) of section 303 of the Bulgarian or Rumanian Claims Funds, as the case may be, until payments on account of awards certified pursuant to paragraph (4) of section 303 with respect to such fund have been authorized in equal proportion to payments previously authorized on existing awards certified pursuant to paragraphs (1), (2), and (3) of section 303.

(7)[43] (A) Except as otherwise provided in subparagraph (D), whenever the Commission is authorized to settle claims by enactment of paragraph (5) of section 303 of this title with respect to Hungary, no further payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission under paragraphs (2) and (3) of section 303 out of the Hungarian Claims Fund until payments on account of awards certified under paragraph (5) of section 303 with respect to such fund have been authorized in equal proportions to payments previously authorized on existing awards certified under paragraphs (2) and (3) of section 303.

(B) Except as otherwise provided in subparagraph (D), with respect to awards previously certified under paragraph (1) of section 303, the Secretary of the Treasury shall not authorize any further payments until payments on account of awards certified under paragraphs (2), (3), and (5) of section 303 have been authorized in equal proportions to payments previously authorized on existing awards certified under paragraph (1) of section 303.

(C) Except as otherwise provided in subparagraph (D), the Secretary of the Treasury shall not authorize any further payments on account of awards certified under paragraph (3), of section 303 based on Kingdom of Hungary bonds expressed in United States dollars or upon awards to Standstill creditors of Hungary that were

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[42] Par. (6) was added by sec. 13 of Public Law 90-421 (82 Stat. 423).

[43] Par. (7) was added by sec. 1(5) of Public Law 93-460 (88 Stat. 1386).

the subject matter of the agreement of December 6, 1969, between the Government of Hungary and the American Committee for Standstill creditors of Hungary.

(D) No payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission under paragraph (5) of section 303 of this title, and no further payments shall be so authorized under paragraph (1), (2), or (3) of section 303 (except payments certified as the result of claims filed under subsection (d) of section 306), until payments on accounts of awards certified under such paragraphs (1), (2), and (3) as the result of a claims filed under subsection (d) of section 306 have been authorized in equal proportions to payments previously authorized on existing awards certified under such paragraphs and arising out of claims filed other than under such subsection (d).

(E) The Secretary of the Treasury is authorized and directed to deduct the sum of $125,000 from the Hungarian Claims Fund and cover such amount into the Treasury to the credit of miscellaneous receipts in satisfaction of the claim of the United States referred to in article 2, paragraph 4 of the United States-Hungarian Claims Agreement of March 6, 1973. Such amount shall be deducted in annual installments over the period during which the Government of Hungary makes payments to the Government of the United States as provided in article 4 of the agreement.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein; and all such claimants shall participate, in proportion to their indicated interests, in the payments provided by this section in all respects as if the award had been in favor of a single person.

Sec. 311. (a) If a corporation or other legal entity has a claim on which an award may be made under this title, no award may be made to any other person under this title with respect to such claim.

(b) A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States. This subsection shall not be construed so as to exclude from eligibility a claim based upon a direct ownership interest in a corporation, association, or other entity, or the property thereof, for loss by reason of the nationalization, compulsory liquidation, or other taking of such corporation, association, or other entity by the

Governments of Bulgaria, Hungary, Italy, Rumania, or the Soviet Government. Any such claim may be allowed without regard to the per centum of ownership vested in the claimant.[44]

Sec. 312. No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II, or who has been convicted of a violation of any provision of chapter 115, of title 18, of the United States Code,[45] or of any other crime involving disloyalty to the United States.

Sec. 313. Payment of any award made pursuant to section 303 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

Sec. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

Sec. 315. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

Sec. 316. (a) The Commission shall complete its affairs in connection with the settlement of claims pursuant to section 305(a)(1) not later than two years, and all other claims pursuant to this title not later than four years, following the date of enactment of this title, or following the date of enactment of legislation making appropriations to the Commission for the payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

(b)[46] The Commission shall complete its affairs in connection with the settlement of claims pursuant to paragraph (4) of section 303 and subsections (b) and (c) of section 304 of this title not later than two years following the date of enactment of such paragraphs, or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred

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[44] The last sentence in sec. 311(b) was added by Public Law 85-604 (72 Stat. 531). Sec. 3(b) of Public Law 85-604 also provided that "Any claim heretofore denied under subsection (b) of section 311 of the International Claims Settlement Act of 1949, as amended, prior to the date of enactment of this section, shall be reconsidered by the Foreign Claims Settlement Commission solely to redetermine its validity and amount by reason of the amendments made by this section.".

[45] 62 Stat. 807.

[46] Subsec. (b) was added by sec. 14 of Public Law 90-421 (82 Stat. 423).

in carrying out its functions under paragraph (4) of section 303 and subsections (b) and (c) of section 304 of this title, whichever is later.

(c) [47] The Commission shall complete its affairs in connection with the settlement of claims pursuant to paragraph (5) of section 303 of this title not later than two years following the deadline established under subsection (c) of section 306 of this title.

Sec. 317. (a) The total remuneration paid to all agents, attorneys at law or in fact, or representatives, for services rendered on behalf of any claimant in connection with any claim filed with the Commission shall not exceed 10 per centum of the total amount paid under this title on account of such claim, or such greater amount as may be determined pursuant to subsection (b) of this section. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration which, together with all remuneration paid to other persons on account of such services and of which he has notice, is in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(b) Not later than three months after the Commission has completed its affairs in connection with the settlement of all claims payable from the fund from which an award is payable, any agent, attorney at law or in fact, or representative who believes that the total remuneration for services rendered in connection with the claim upon which such award is made should exceed the maximum otherwise permitted by this section may, pursuant to such procedure as the Commission shall prescribe by regulation, petition the Commission for an order authorizing the payment of remuneration in excess of such maximum. The Commission shall issue such an order only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess; and such order shall state the amount of the excess which may so be paid. The determination of the Commission in ruling upon such petition shall be within the sole discretion of the Commission and shall not be subjected to review by any court.

Sec. 318. The following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; and subsections (c), (d), (e), and (f) of section 7.

TITLE IV [48]

CLAIMS AGAINST CZECHOSLOVAKIA

Sec. 401. As used in this title—

(1) "National of the United States," means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly, or indirectly, more than 50 per centum of the outstanding capital stock

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[47] Subsec. (c) was added by sec. 1(6) of Public Law 93-460 (88 Stat. 1386).

[48] 22 U.S.C. 1642-1642q. Title IV was added by Public Law 85-604 (72 Stat. 527). See also Czechoslovakian Claims Settlement Act of 1981 (page 513).

or other beneficial interest in such legal entity. It does not include aliens.

(2) "Commission" means the Foreign Claims Settlement Commission of the United States, established, pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

(3) "Property" means any property, right, or interest.

Sec. 402. (a) The Secretary of the Treasury is directed to hold, in an account in the Treasury of the United States, the net proceeds of the sale of certain Czechoslovakian steel mill equipment heretofore blocked and sold in the United States by order of the Secretary of the Treasury under authority of Executive Order Numbered 9193, dated July 6, 1942 (7 F.R. 5205, July 9, 1942).

(b)[49] There is hereby created in the Treasury of the United States a fund to be designated the Czechoslovakian Claims Fund, for the payment of unsatisfied claims of nationals of the United States against Czechoslovakia as authorized in this title.

(c) If, within one year following the date of enactment of this title, the Government of Czechoslovakia voluntarily settles with and pays to the Government of the United States a sum in payment of claims of United States nationals against Czechoslovakia, all moneys held pursuant to subsection (a) of this section will be disposed of in accordance with the terms of the settlement agreement with Czechoslovakia and applicable provisions of this title and the sum paid by Czechoslovakia shall be covered into the Czechoslovakian Claims Fund.

(d) Upon the expiration of one year after the date of enactment of this title if no settlement with Czechoslovakia of the type specified in subsection (c) of this section has occurred, all moneys held pursuant to subsection (a) of this section except amounts held in reserve pursuant to section 403 of this title, shall be covered into the Czechoslovakian Claims Fund.

(e) The Secretary of the Treasury shall deduct from the Czechoslovakian Claims Fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title.[50] The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(f) After the deduction for administrative expenses pursuant to subsection (e) of this section, and after payment of awards certified pursuant to section 410 of this title, the balance remaining in the Fund, if any, shall be paid to Czechoslovakia in accordance with instructions to be provided by the Secretary of State.

Sec. 403. No judicial relief or remedy shall be available to any person asserting a claim against the United States or any officer or agent thereof with respect to any action taken under this title, or any other claim for or on account of the property or proceeds de-

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[49] See also sec. 4 of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127; page 514) which establishes three accounts in the Fund which shall be available for payments of claims awarded under sec. 410 of this act, under sec. 5 of Public Law 97-127, and under sec. 6 of Public Law 97-127.

[50] Sec. 4(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127) stipulates that $50,000 shall be deducted from the fund for the costs of administrating this title and Public Law 97-127, and that such deduction shall be made in lieu of the deduction described in this subsection.

scribed in section 402 of this title, or for any other action taken with respect thereto except to the extent that the action complained of constitutes a taking of private property without just compensation, and to such extent the sole judicial relief and remedy available shall be an action brought against the United States in the United States Claims Court [51] which action must be brought within one year of the date of enactment of this title or it shall be forever barred; and any action so brought shall receive a preference over all actions which themselves are not given preference by statute. No other court shall have original jurisdiction to consider any such claim by mandamus or otherwise. If any action is brought pursuant to this section the Secretary of the Treasury shall set aside an appropriate reserve in the account containing the moneys held pursuant to subsection (a) of section 402 of this title. Such reserve shall be retained pending a final determination of all issues raised in the action and recovery in any such action shall be limited to and paid out of the moneys so reserved. After a final determination of all issues raised in the action and payment of any judgment against the United States entered pursuant thereto, any balance no longer required to be held in reserve shall be disposed of in accordance with the provisions of subsection (d) of section 402 of this title. Nothing in this section shall be construed to create (1) any liability against the United States for any action taken pursuant to section 404 of this title, (2) any liability against the United States in favor of the Government of Czechoslovakia, any agency or instrumentality thereof or any person who is an assignee or successor in interest thereto, or (3) any other liability against the United States.

Sec. 404. The Commission shall determine in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States, subject, however, to the terms and conditions of an applicable claims agreement, if any, concluded between the Governments of Czechoslovakia and the United States within one year following the date of enactment of this title. In making the determination with respect to the validity and amount of claims and value of properties, rights, or interest taken, the Commission is authorized to accept the fair or proved value of the said property, right, or interest as of a time when the property or business enterprise taken, was last operated, used, managed or controlled by the national or nationals of the United States asserting the claim irrespective of whether such date is prior to the actual date of nationalization or taking by the Government of Czechoslovakia.

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[51] Reference to the United States Claims Court was substituted in lieu of a reference to the United States Court of Claims by sec. 161(3) of the Federal Courts Improvement Act (Public Law 97-164; Stat. 49).

Sec. 405.[52] A claim under section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

Sec. 406. (a) A claim under section 404 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall be denied.

(b) A claim under section 404 of this title, based upon a direct ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the nationalization or other taking was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

(c) A claim under section 404 of this title, based upon an indirect ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such nationalization or other taking was vested in nationals of the United States.

(d) Any award on a claim under subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant bears to the entire ownership interest thereof.

Sec. 407. In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which such award is made.

Sec. 408. With respect to any claim under section 404 of this title which, at the time of the award, is vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in the payments authorized by this title in all respects as if the award had been in favor of a single person.

Sec. 409. No award shall be made on any claim under section 404 of this title to or for the benefit of (1) any person who has been convicted of a violation of any provision of chapter 115, title 18, of the United States Code, or of any other crime involving disloyalty

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[52] See also sec. 6(b) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127; page 515) which states in part that the provisions of this section "shall be deemed to be met if such property was owned on such a date by a person who became a national of the United States on or before February 26, 1948."

to the United States, or (2) any claimant whose claim under this title is within the scope of title III of this Act.

Sec. 410. The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 411. Within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication.

Sec. 412. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 411 of this title or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

Sec. 413. (a) The Secretary of the Treasury is authorized and directed, out of the sums covered into the Czechoslovakian Claims Fund, to make payments on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority.

(1) Payment in the amount of $1,000 or in the amount of the award, whichever is less.

(2) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to this title which shall bear to such unpaid balance the same proportion as the total amount in the fund available for distribution at the time such payments are made bears to the aggregate unpaid balance of all such awards.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purpose of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant.

(d) If any person to whom any payment is to be made pursuant to this title is decreased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance and with the requirements of law with respect to the administration of estates.

(e) Subject to the provisions of any claims agreement hereafter concluded between the Governments of Czechoslovakia and the United States, payment of any award pursuant to this title shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim or be construed to have divested any claimant, or the United States on his behalf, of any

rights against any foreign government for the unpaid balance of his claim.

Sec. 414. No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

Sec. 415. The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

Sec. 416. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and (f) of section 7.

Sec. 417. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

TITLE V [53]

PURPOSE OF TITLE

Sec. 501. It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba,[54] or the Chinese Communist regime,[55] which have arisen since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949 in the case of claims against the Chinese Communist regime,[56] out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Government of Cuba, or the Chinese Communist regime,[55] in order to obtain information concerning the total amount of such claims against the Government of Cuba, or the Chinese Communist regime,[55] on

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[53] 22 U.S.C. 1643–1643k. Title V was added by Public Law 88–666 (78 Stat. 1110). Public Law 89–780 (80 Stat. 1365) amended title V to provide for the determination of the amounts of claims of nationals of the United States.

[54] Sec. 501 was amended by Public Law 89–262 (79 Stat. 988) which struck out "which have arisen out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or" which previously followed "the Government of Cuba".

[55] This section was amended by Public Law 89–780 (80 Stat. 1365) by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

[56] This section was amended by Public Law 89–780 (80 Stat. 1365) by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959.".

behalf of nationals of the United States. This title shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims.

Sec. 502. For the purposes of this title:

(1) The term "national of the United States," means (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the United States, or of any States, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any leasehold interest, and debts owned by the Government of Cuba or the Chinese Communist regime [55] or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime [55] and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime.[55]

(4) The term "Government of Cuba" includes the government of any political subdivision, agency, or instrumentality thereof.

(5) [57] The term "Chinese Communist regime" means the so-called People's Republic of China, including any political subdivision, agency, or instrumentality thereof.

RECEIPT OF CLAIMS

Sec. 503. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba [58] or the Chinese Communist regime,[55] arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[59] for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States, if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Commu-

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[57] Par. (5) was added by sec. 2 of Public Law 89-780 (80 Stat. 1365).

[58] Sec. 2 of Public Law 89-262 (79 Stat. 988) struck out "arising out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or which previously appeared at this point".

[59] This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365) by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959.".

nist regime,[60] or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized under this title, whichever date is later. In making the determination with respect to the validity and the amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement.

(b) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime,[55] arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[56] for disability or death resulting from actions taken by or under the authority of the Government of Cuba, or the Chinese Communist regime,[55] if such claims are submitted to the Commission within the period established by the Commission under subsection (a), or within six months after the date the claims first arose (as determined by the Commission), whichever date last occurs.

OWNERSHIP OF CLAIMS

Sec. 504. (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

(b) A claim for disability under section 503(b) may be considered if it is filed by the disabled person or by his successors in interest; and a claim for death under section 503(b) may be considered if filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damage sustained on account of such death. A claim shall not be considered under this section unless the disabled or deceased person was a national of the United States at the time of injury or death and if considered, shall be considered only to the extent the claim has been held by a national or nationals of the United States continuously until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 505. (a) A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or

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[60] This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365) by inserting "or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime," after "within sixty days after the enactment of this title".

other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba, or the Chinese Communist regime.[61]

(b) A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 506.[62] In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

ACTION OF COMMISSION WITH RESPECT TO CLAIMS

Sec. 507. (a) The Commission shall certify to each individual who has filed a claim under this title the amount determined by the Commission to be the loss of damage suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in reaching its decision.

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

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[61] This sentence was added by sec. 3 of Public Law 89-262 (79 Stat. 988). The sentence was amended by sec. 4 of Public Law 89-780 (80 Stat. 1365), by adding to the end thereof a comma and the following: "or the Chinese Communist regime.".

[62] Sec. 506 was amended by sec. 4 of Public Law 89-262 (79 Stat. 988) by striking out: "*Provided*, That the deduction of such amounts shall not be construed as divesting the United States of any rights against the Government of Cuba for the amounts so deducted".

TRANSFER OF RECORDS

Sec. 508. The Secretary of State shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

APPLICATION OF OTHER LAWS

Sec. 509. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsection (f) of section 7.

SETTLEMENT PERIOD

Sec. 510.[63] The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than July 6, 1972.

APPROPRIATIONS

Sec. 511.[64] There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission to pay its administration expenses incurred in carrying out its functions under this title.

FEES FOR SERVICES

Sec. 512. No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of so much of the total amount of such claim, as determined under this title, as does not exceed $20,000, plus 5 per centum of so much of such amount, if any, as exceeds $20,000. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

SEPARABILITY

Sec. 513. If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the reminder of the Act, or the application of such provision to other persons or circumstances, shall not be affected.

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[63] Sec. 510 was amended by Public Law 91-157 (83 Stat. 435), which set July 6, 1972, as the final date for the settlement of claims pursuant to this title.

[64] Sec. 511, as added by Public Law 88-666 (78 Stat. 1113), was amended by sec. 5 of Public Law 89-262 (79 Stat. 988).

TITLE VI [65]

PURPOSE OF TITLE

Sec. 600. It is the purpose of this title to provide for the determination of the validity and amounts of outstanding claims against the German Democratic Republic which arose out of the nationalization, expropriation, or other taking of (or special measures directed against) property interests of nationals of the United States. This title shall not be construed as authorizing or as any intention to authorize an appropriation by the United States for the purpose of paying such claims.

DEFINITIONS

Sec. 601. As used in this title—

(1) The term "national of the United States" means—

(a) a natural person who is a citizen of the United States;

(b) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any lease-hold interest, and debts owed by enterprises which have been nationalized, expropriated, or taken by the German Democratic Republic for which no restoration or no adequate compensation has been made to the former owners of such property.

(4) The term "German Democratic Republic" includes the government of any political subdivision, agency, or instrumentality thereof or under its control.

(5) The term "Claims Fund" is the special fund established in the Treasury of the United States composed of such sums as may be paid to the United States by the German Democratic Republic pursuant to the terms of any agreement settling such claims that may be entered into by the Governments of the United States and the German Democratic Republic.

RECEIPT AND DETERMINATION OF CLAIMS

Sec. 602. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any

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[65] 22 U.S.C. 1644–1644m. Title VI was added by Public Law 94–542 (90 Stat. 2509).

rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. Such claims must be submitted to the Commission within the period specified by the Commission by notice published in the Federal Register (which period shall not be more than twelve months after such publication) within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

OWNERSHIP OF CLAIMS

Sec. 603. A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 604. (a) A claim under section 602 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States, shall not be considered. A claim under section 602 of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, or taken by the German Democratic Republic.

(b) A claim under section 602 of this title based upon a direct ownership interest in a corporation, association, or other entity for loss, shall be considered subject to the provisions of this title, if such corporation, association or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 602 of this title for losses based upon an indirect ownership interest in a corporation, association, or other entity, shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States.

(d) The amount of any claim covered by subsections (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 605. In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses, including any amount claimant received under section 202(a) of the War Claims Act of 1948, as amended, for losses which occurred as a direct consequence of special measures directed against such property in any area covered under this title.

CONSOLIDATED AWARDS

Sec. 606. With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person.

CLAIMS FUND

Sec. 607. (a) The Secretary of the Treasury is hereby authorized to establish in the Treasury of the United States a fund to be designated the Claims Fund as defined under section 601(5) for the payment of unsatisfied claims of nationals of the United States against the German Democratic Republic as authorized in this title.

(b) The Secretary of the Treasury shall deduct from any amounts covered into the Claims Fund, an amount equal to 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

AWARD PAYMENT PROCEDURES

Sec. 608. (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to section 602 of this title.

(b) Upon certification of such award, the Secretary of the Treasury is authorized and directed, out of the sums covered into the Claims Fund, to make payments on account of such awards as follows, and in the following order of priority:

(1) payment in full of the principal amount of each award of $1,000 or less;

(2) payment in the amount of $1,000 on account of the principal amount of each award of more than $1,000 in principal amount;

(3) thereafter, payments from time to time, in ratable proportions, on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the fund available for distribution at the time such payments are made;

(4) after payment has been made in full of the principal amounts of all awards, pro rata payments may be made on account of any interest that may be allowed on such awards;

(5) payments or applications for payments shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

SETTLEMENT PERIOD

Sec. 609. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 602 of this title.

TRANSFER OF RECORDS

Sec. 610. The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

APPROPRIATIONS

Sec. 611. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their respective administrative expenses incurred in carrying out their functions under this title.

FEES FOR SERVICES

Sec. 612. No remuneration on account of services rendered on behalf of any claimant, in connection with any claim filed with the Commission under this title, shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claims. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

APPLICATION OF OTHER LAWS

Sec. 613. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of the Act shall be applicable to this title: subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and (f) of section 7.

SEPARABILITY

Sec. 614. If any provisions of this Act or the application thereof to any person or circumstances shall be held invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected.

PROTESTS

Sec. 615. Notwithstanding the provision of sections 210 and 211 of the War Claims Act of 1948 (Act of July 3, 1948), as amended by Public Law 87-846, the Foreign Claims Settlement Commission established by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) is authorized and directed to receive and consider protests relating to awards made by the Commission during the ten calendar days immediately preceding the expiration of the Commission's mandate to make such awards on May 17, 1967. Any such protests must be filed within ninety days after notice of the enactment of this provision is filed with and published in the Federal Register, which shall take place within thirty days of enactment. Such protests may include the submission of new evidence not previously before the Commission, and shall be acted upon within thirty days after receipt by the Commission. The Commission may modify awards made during the subject period in accordance with the procedures established by the War Claims Act of 1948, and any increases in awards determined to be appropriated by the Commission shall be certified to and paid by the Secretary of the Treasury out of funds which are now or may hereafter become available in the War Claims Fund in accordance with section 213 of the Act.

TITLE VII [66]

PURPOSE OF TITLE

Sec. 701. It is the purpose of this title to provide for the determination of the validity and amounts of outstanding claims against Vietnam which arose out of the nationalization, expropriation, or other taking of (or special measures directed against) property of nationals of the United States. This title shall not be construed as authorizing or as any intention to authorize an appropriation by the United States for the purpose of paying such claims.

DEFINITIONS

Sec. 702. As used in this title—

(1) the term "national of the United States" means—

(A) a natural person who is citizen of the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly, or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity;

(2) the term "Commission" means the Foreign Claims Settlement Commission of the United States;

(3) the term "property" means—

(A) any property, right, or interest, including any leasehold interest,

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[66] 22 U.S.C. 1645-1645o. Title VII was added by Public Law 96-606 (94 Stat. 3534).

(B) any debt owed by Vietnam or by any enterprise which has been nationalized, expropriated, or otherwise taken by Vietnam, and

(C) any debt which is a charge on property which has been nationalized, expropriated, or otherwise taken by Vietnam;

(4) the term "Vietnam" means—

(A) the Government of the Socialistic Republic of Vietnam,

(B) any predecessor governing authority operating in South Vietnam on or after April 29, 1975, including the Provisional Revolutionary Government of South Vietnam,

(C) the Government of the former Democratic Republic of Vietnam, and

(D) any political subdivision, agency, or instrumentality of any of the entities referred to in subparagraphs (A), (B), and (C); and

(5) the term "Claims Fund" means the special fund established in the Treasury of the United States composed of such sums as may be paid to or realized by the United States pursuant to the terms of any agreement settling those claims described in section 703 that may be entered into between the Governments of the United States and Vietnam.

RECEIPT AND DETERMINATION OF CLAIMS

Sec. 703. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly, or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made. Such claims must be submitted to the Commission within the period specified by the Commission by notice published in the Federal Register (which period shall not be more than a period of two years beginning on the date of such publication) within sixty days after the date of the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

OWNERSHIP OF CLAIMS

Sec. 704. A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly, or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 705. (a) A claim under section 703 of this Act based upon an ownership interest in any corporation, association, or other entity which is a national of the United States may not be considered. A claim under section 703 based upon a debt of other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico may be considered only if such debt or other obligation is a charge on property which has been nationalized, expropriated, or otherwise taken by Vietnam.

(b) A claim under section 703 based upon a direct ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 703 based upon an indirect ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States or if, at the time of the loss, nationals of the United States in fact controlled the corporation, association, or entity, as determined by the Commission.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by the corporation, association, or other entity, with respect to which the claim is made, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 706. In determining the amount of any claim under this title, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses for which the claim is filed.

CERTIFICATION; ASSIGNED CLAIMS

Sec. 707. (a) The Commission shall certify to each claimant who files a claim under this title the amount determined by the Commission to be the loss suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in making that determination.

(b) In any case in which a claim under this title is assigned by purchase before the Commission determines the amount due on that claim, the amount so determined shall not exceed the amount of actual consideration paid by the last such assignee.

CONSOLIDATED AWARDS

Sec. 708. With respect to any claim under section 703 of this Act which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled to the award, which award shall indicate the respective interests of such claimants in the award, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award has been in favor of a single person.

CLAIMS FUND

Sec. 709. (a) The Secretary of the Treasury may establish in the Treasury of the United States the Claims Fund for the payment of unsatisfied claims of nationals of the United States against Vietnam, as authorized by this title.

(b) The Secretary of the Treasury shall deduct from any amounts covered into the Claims Fund an amount equal to 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amounts so deducted shall be covered into the Treasury as miscellaneous receipts.

AWARD PAYMENT PROCEDURES

Sec. 710. (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to section 703 of this Act.

(b)(1) Upon certification of each award made pursuant to section 703, the Secretary of the Treasury shall, out of the sums covered into the Claims Fund, make payments on account of such awards as follows, and in the following order or priority:

(A) Payment in the amount of $2,500 or the principal amount of the award, whichever is less.

(B) Thereafter, payments from time to time, in ratable proportions, on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the Claims Fund available for distribution at the time such payments are made.

(2) After payment has been made in full of the principal amounts of all awards pursuant to paragraph (1), pro rata payments may be made on account of any interest that may be allowed on such awards.

(c) Payments or applications for payments under subsection (b) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

SETTLEMENT PERIOD

Sec. 711. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than

three years after the final date for the filing of claims as provided in section 703 of this Act.

TRANSFER OF RECORDS

Sec. 712. The Secretary of State, the Secretary of the Treasury, and the Secretary of Defense shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

AUTHORIZATION OF APPROPRIATIONS

Sec. 713. There are authorized to be appropriated for any fiscal year beginning on or after October 1, 1980, such sums as may be necessary to enable the Commission and the Treasury Department to pay their respective administrative expenses incurred in carrying out their functions under this title. Amounts appropriated under this section may remain available until expended.

FEES FOR SERVICES

Sec. 714. No remuneration on account of services rendered on behalf of any claimant, in connection with any claim filed with the Commission under this title, shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

APPLICATION OF OTHER PROVISIONS OF THE ACT

Sec. 715. (a) To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: subsections (b), (c), (d), (e), and (h) of section 4 and subsections (c), (d), (e), and (f) of section 7. Any reference in such provisions to "this title" shall be deemed to be a reference to those provisions and to this title.

(b) Except as otherwise provided in this title and in those provisions of title I referred to in subsection (a), the Commission shall comply with the provisions of subchapter II of chapter 5, and the provisions of chapter 7, of title 5, United States Code.

SEPARABILITY

Sec. 716. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of this title or the application of such provision to other persons or circumstances shall not be affected.

b. Ryukyu Claims Settlement Act

Public Law 89-296 [S.J. Res. 32], 79 Stat. 1071, approved October 27, 1965

JOINT RESOLUTION To authorize a contribution to certain inhabitants of the Ryukyu Islands for death and injury to persons and for use of and damage to private property, arising from acts and omissions of the United States Armed Forces, or members thereof, after August 15, 1945, and before April 28, 1952.

Whereas certain persons of the Ryukyu Islands suffered damages incident to the activities of the Armed Forces of the United States, or members thereof, after the surrender of Japanese forces in the Ryukyus on August 15, 1945, and before the effective date of the Treaty of Peace with Japan on April 28, 1952;

Whereas article 19 of the Treaty of Peace with Japan extinguished the legal liability of the United States for any claims of Japanese nationals, including Ryukyuans, with the result that the United States has made no compensation for the above-mentioned damages (except for use of and damage to land during the period from July 1, 1950 to April 28, 1952);

Whereas it is particularly consonant with the concern of the United States, as the sole administering authority in the Ryukyu Islands, for the welfare of the Ryukyuan people, that those Ryukyuans who suffered damages incident to the activities of the United States Armed Forces, or members thereof, should be compensated therefor;

Whereas payment of ex gratia compensation, by advancing the welfare of the Ryukyuan people, will promote the security interest, foreign policy, and foreign relations of the United States; and

Whereas the High Commissioner of the Ryukyu Islands has considered the evidence regarding these claims, and has determined, in an equitable manner, those claims which are meritorious, and the amounts thereof: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States should make an ex gratia contribution to the persons (excluding municipalities) determined by the High Commissioner of the Ryukyu Islands to be meritorious claimants, in the amounts determined by him, and that the Secretary of the Army or his designee should, under regulations prescribed by the Secretary of Defense, pay such amounts to the claimants or their legal heirs, as a civil function of the Department of the Army; and be it further

Resolved, That no funds appropriated under this joint resolution shall be disbursed to satisfy claims, or portions thereof, which have been satisfied by contributions made by the Government of Japan.

Sec. 2. There is authorized to be appropriated not to exceed $22,000,000 [1] to carry out the provisions of this joint resolution, which funds are authorized to remain available for two years from the effective date of their appropriation. Any funds unobligated by the end of that period shall be covered into the Treasury of the United States.

Sec. 3. No remuneration on account of services rendered on behalf of any claimant in connection with any claim shall exceed 5 per centum of the total amount paid, pursuant to the provisions of this joint resolution, or such claim; except that no remuneration on account of such services rendered on behalf of any association of claimants by any agent or attorney (including organizations thereof) shall exceed 1 per centum of the aggregate amount so paid on the claims involved. Fees already paid for such services shall be deducted from the amounts authorized under this joint resolution. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

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[1] Public Law 89-691 (80 Stat. 1018), approved Oct. 15, 1966, appropriated the amount "$21,040,000."

c. Micronesian Claims Act of 1971, as amended

Public Law 92-39 [H.J. Res. 617], 85 Stat. 92, 50 App. U.S.C. 2018-2020b,[1] approved July 1, 1971, as amended by Public Law 93-131 [H.R. 6628], 87 Stat. 460, approved October 19, 1973

JOINT RESOLUTION To authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages arising out of the hostilities of the Second World War, to provide for the payment of noncombat claims occurring prior to July 1, 1951, and to establish a Micronesian Claims Commission.

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands, formerly under League of Nations mandate to Japan, suffered from the hostilities of the Second World War; and

Whereas the United States, while not liable for wartime damages suffered by the Micronesians, has responsibility for the welfare of the Micronesian people as the administering authority of the Trust Territory of the Pacific Islands; and

Whereas the Governments of Japan and the United States entered into an agreement on April 18, 1969, to contribute ex gratia the equivalent of $10,000,000 to the Micronesian inhabitants of the Trust Territory of the Pacific Islands in view of the suffering caused by the hostilities of the Second World War, each Government contributing the equivalent of $5,000,000, Japan's contribution to take the form of products and services; and

Whereas payments of these ex gratia contributions to certain Micronesian inhabitants of the Trust Territory of the Pacific Islands will meet a longstanding Micronesian grievance and will promote the welfare of the Micronesian people; and

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands claim to have suffered damage to or loss or destruction of property, personal injury, or death caused by military and civilian employees of the United States Government and arising out of accidents or incidents between the dates of the securing of the various islands of Micronesia by the United States Armed Forces and July 1, 1951, and within an area under the control of the United States at the time of the accident or incident; and

Whereas the United States is desirous of making an equitable settlement of these claims by way of a monetary contribution: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this resolution may be cited as the "Micronesian Claim Act of 1971".

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[1] Secs. 2018 to 2020b terminated Aug. 3, 1976, pursuant to sec. 103(e) of this Act.

TITLE I

Sec. 101. (a) It is the purpose of this title that, with respect to war claims, the United States should make the ex gratia contribution of $5,000,000 matching an equivalent contribution of the Government of Japan, to Micronesian inhabitants of the Trust Territory of the Pacific Islands who are determined by the Micronesian Claims Commission to be meritorious claimants, in particular amounts to be awarded by the Micronesian Claims Commission, and that the Secretary of the Interior, hereinafter referred to as the "Secretary", or his designee, shall pay to said Micronesian claimants as soon as possible following his receipt of the final report of the Micronesian Claims Commission on the claims allowed, such amounts as are finally certified pursuant to section 104 of this title.

(b) [2] A "Micronesian inhabitant of the Trust Territory of the Pacific Islands" is defined for the purposes of this Act as a person who—

(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen of the Trust Territory of the Pacific Islands, or is a citizen of the United States, as of the date of filing a claim; or

(2) if then living, would have been eligible to become a citizen of the Trust Territory of the Pacific Islands on July 18, 1947; or

(3) is the successor, heir, or assignee of a person eligible under paragraph (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands, or of the United States, as of the date of filing a claim.

Sec. 102. (a) There is hereby authorized to be appropriated to the Trust Territory of the Pacific Islands $5,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriations authorized by section 2 of the Act of June 30, 1954, as amended, to be paid into a "Micronesian Claims Fund". The Secretary is hereby authorized to create and manage said Micronesian Claims Fund.

(b) Funds approximating $5,000,000 appropriated to the Trust Territory of the Pacific Islands for supplies or capital improvements in accordance with the Act of June 30, 1954, as amended, shall be paid into a Micronesian Claims Fund as the products of Japan and the services of the Japanese people in the amount of one billion eight hundred million yen (currently computed at $5,000,000) are provided by Japan pursuant to article I of the "Agreement between the United States of America and Japan", signed April 18, 1969. These funds, together with the sum author-

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[2] Subsec. (b) was amended by sec. 1 of Public Law 93-131 (87 Stat. 460). The text formerly read:

"(b) A 'Micronesian inhabitant of the Trust Territory of the Pacific Islands' is defined for the purposes of this joint resolution as a person who:

"(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen as of the date of filing a claim; or

"(2) if then living, would have been eligible for citizenship on July 18, 1947; or

"(3) is the successor, heir, or assignee of a person eligible under paragraph (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands as of the date of filing a claim."

ized to be appropriated by subsection (a) of this section, shall constitute the whole of the Micronesian Claims Fund.

Sec. 103. (a) There is hereby established a Micronesian Claims Commission, hereinafter referred to as the "Commission", such Commission to be under the control and direction of the Chairman of the Foreign Claims Settlement Commission. The Commission shall be composed of five members, who shall be appointed, in consultation with the Secretary, by the Chairman of the Foreign Claims Settlement Commission, one of whom he shall designate as Chairman. Two members shall be selected from a list of Micronesian citizens nominated by the Congress of Micronesia. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of the original appointment. The members of the Commission shall serve at the pleasure of the Chairman of the Foreign Claims Settlement Commission. No Commissioner shall hold other public office or engage in any other employment during the period of his service on the Commission, except as an employee of the Foreign Claims Settlement Commission.

(b) The members of the Commission shall receive compensation and allowances as determined by the Chairman of the Foreign Claims Settlement Commission by application of the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event shall traveling and other expenses incurred in connection with their duties as members, or a per diem allowance in lieu thereof, exceed that prescribed in accordance with the provisions of subchapter 1 of chapter 57 of title 5, United States Code. The term of office of the members of the Commission shall expire at the time fixed in subsection (e) of this section for winding up the affairs of the Commission.

(c) The Commission may, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, appoint and fix the compensation and allowances of such officers, attorneys, and employees of the Commission as may be reasonably necessary for its proper functioning, which employees shall be in addition to those who may be assigned by the Chairman of the Foreign Claims Settlement Commission to assist the Commission in carrying out its functions. The compensation and allowances of employees appointed pursuant to this section shall be within the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event to exceed the amount of allowances prescribed in subchapter 1 of chapter 57 of title 5, United States Code. In addition, the Commission, with the approval of the Chairman of the Foreign Claims Settlement Commission, may make such expenditures as may be reasonably necessary to carry out its proper functioning. Officers and employees of any other department or agency of the Government of the United States or the government of the Trust Territory of the Pacific Islands may, with the consent of the head of such department or agency, with or without reimbursement, be assigned to assist the Commission in carrying out its functions. The Commission may, with the consent of the head of any other department or agency of the government of the United States or the government of the Trust Territory of the Pacific Islands, utilize, with or without reimbursement, the fa-

cilities and services of such department or agency in carrying out the functions of the Commission.

(d) The Commission shall, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, prescribe such rules and regulations as are necessary for carrying out its functions. As expeditiously as possible and, in any event, within three months of its appointment, the Commission shall give public notice in the Trust Territory of the Pacific Islands of the time when, and the limit of time within which, claims may be filed, which notice shall be given in such manner as the Commission shall prescribe: *Provided* That the final date for the filing of claims shall not be more than one year after the appointment of the full membership of the Commission. The Commission shall give extensive publicity in the Trust Territory of the Pacific Islands to the provisions of this Act and shall make every effort to advise promptly all persons who may be entitled to file claims under the provisions of this Act administered by the Commission of their rights under such provisions, and to assist them in the preparation and filing of their claims. A majority of the membership of the Commission shall be necessary to transact business: *Provided, however,* That an affirmative vote of at least three members shall be required for the promulgation of rules and regulations, and for the final adjudication of any claim.

(e) The Commission shall wind up its affairs [3] as expeditiously as possible and in any event not later than three years after the expiration of the time for filing claims under this Act.

Sec. 104. (a) The Commission shall have authority to receive, examine, adjudicate, and render final decisions, in accordance with the laws of the Trust Territory of the Pacific Islands and international law, with respect to (1) claims of the Micronesian inhabitants of the Trust Territory of the Pacific Islands who suffered loss of life, physical injury, and property damage directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by United States Armed Forces, and (2) those claims arising as postwar claims between the dates of the securing of the various islands of Micronesia by United States Armed Forces and July 1, 1951. The Commission shall notify all claimants of the approval or denial of their claims, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission or its representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. As claims are adjudicated, the Commissioner shall certify them to the Secretary for payment in such manner as he may direct.[4] The claims covered by title I of this Act

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[3] The Commission terminated on Aug. 3, 1976.

[4] This sentence was amended by sec. 2 of Public Law 93-131. This sentence formerly read: "When all claims have been adjudicated, the Commission shall certify them to the Secretary for payment.".

shall be paid from the Micronesian Claims Fund except that, as to claims based on death, up to $1,000 shall be paid immediately upon adjudication, and the claims covered by title II of this Act shall be paid by the Secretary from the funds appropriated for such purpose.

(b) No later than six months after its organization, and annually thereafter, the Commission shall make a report, through the Chairman of the Foreign Claims Settlement Commission, to the Congress of the United States concerning its operations under this Act. The Commission shall, upon winding up its work, certify to the Chairman of the Foreign Claims Settlement Commission, the Secretary, and to the Congress of the United States the following:

(1) A list of all claims allowed, in whole or in part, together with the amount of each claim and, the amount awarded thereon.

(2) A list of all claims disallowed.

(3) A copy of the decision rendered in each case.

(c) In the event that funds remain in the Micronesian Claims Fund after all allowable and adjudicated claims are paid, such remaining funds shall be transferred from the Micronesian Claims Fund to the Treasury of the Trust Territory of the Pacific Islands for appropriation by the Congress of Micronesia for the welfare of the people of the Trust Territory of the Pacific Islands. In the event the allowable and adjudicated claims covered by title I of the act exceed a total of $10,000,000, the Secretary shall make pro rata payments.

(d) No payment shall be made on an award of the Commission unless the claimant shall first execute a full release to the United States and Japan in respect to any alleged liability of the United States or Japan, or both, arising before the date of the securing of the various islands of Micronesia by the United States Armed Forces.

Sec. 105. There is authorized to be appropriated such sums as may be necessary for the operation and administrative expenses of the Foreign Claims Settlement Commission, to the extent needed to cover activity connected with this Act, and of the Commission in order to carry out the purposes of this Act.

Sec. 106. The agreement for the payment of the Micronesian claims covered by title I of this Act having been reached by negotiators of the Governments of the United States and Japan, and since personnel to be appointed by the Secretary or the Commission will be available to assist the people of the Trust Territory of the Pacific Islands insofar as may be necessary in filing all claims covered by either title I or title II of this Act, no remuneration on account of services rendered on behalf of any claimant, or any association of claimants, in connection with any claim or claims covered by either title I or title II shall exceed, in total, 1 per centum of the amount paid on such claim or claims, pursuant to the provisions of this Act. Fees already paid for such services shall be deducted from the amount authorized by this Act. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor and, upon convic-

tion thereof, shall be fined not more than $5,000 or imprisoned not more then twelve months, or both.

TITLE II

Sec. 201. For the purpose of promoting and maintaining friendly relations by the final settlement of meritorious postwar claims, the Micronesian Claims Commission is, pursuant to authority granted in section 104(a) title I, authorized to consider, ascertain, adjust, determine, and make payments, where accepted by the claimant in full satisfaction and in final settlement, of all claims by Micronesian inhabitants against the United States or the government of the Trust Territory of the Pacific Islands on account of personal injury or death or damage to or loss or destruction of private property, both real and personal, of Micronesian inhabitants of the former Japanese mandated islands, now the Trust Territory of the Pacific Islands administered by the United States under a trusteeship agreement with the United Nations, including claims for a taking or for use or retention of such property where no payments or inadequate payments have been made for such taking, use, or retention when such damage, loss, or destruction was caused by the United States Army, Navy, Marine Corps, or Coast Guard, or individual members thereof, including military personnel and United States Government civilian employees, and including employees of the Trust Territory government acting within the scope of their employment: *Provided,* That only those claims shall be considered by the Commission which are presented in writing as provided for in section 103(d) of title I of this Act and the accident or incident out of which the claim arose occurred prior to July 1, 1951, within the islands which now comprise the Trust Territory of the Pacific Islands and within an area under the control of the United States at the time of the accident or incident: *Provided further,* That any such settlements made by such Commission and any such payments made by the Secretary under the authority of title I or title II shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary and not subject to review.

Sec. 202. There is hereby authorized to be appropriated the amount of $20,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriation authorized by section 2 of the Act of June 30, 1954, as amended, to be expended by the Secretary for the purposes of making payments to the extent authorized by this title of this Act.

Sec. 203. Any funds appropriated for the purposes of this title which remain after the settlement of claims under the provisions of this title shall be covered into the Treasury of the United States.

(1) Civil Government for the Trust Territory of the Pacific Islands

Public Law 83-451 [S. 3318], 68 Stat. 330, approved June 30, 1954, as amended by Public Law 87-541 [S. 2775], 76 Stat. 171, approved July 19, 1962; by Public Law 88-487 [H.R. 3198], 78 Stat. 601, approved August 22, 1964; by Public Law 90-16 [S. 303], 81 Stat. 15, approved May 10, 1967; by Public Law 90-617 [S. 3207], 82 Stat. 1213, approved October 21, 1968; by Public Law 91-578 [3479], 84 Stat. 1559, approved December 24, 1970; by Public Law 91-606 [S. 3619], 84 Stat. 1744, approved December 31, 1970; and by Public Law 93-111 [S. 1385], 87 Stat. 354, approved September 21, 1973; by Public Law 93-288 [S. 3062], 88 Stat. 164, approved May 22, 1974; by Public Law 94-27 [S. 326], 89 Stat. 95, approved May 28, 1975; by Public Law 94-255 [H.R. 12122], 90 Stat. 299, approved April 1, 1976; by Public Law 95-134 [H.R. 6550], 91 Stat. 1159, approved October 15, 1977; by Public Law 96-205 [H.R. 3756], 94 Stat. 84, approved March 12, 1980; by Public Law 96-597 [H.R. 8444], 94 Stat. 3478, approved December 24, 1980; and by Public Law 97-357 [H.R. 5139], 96 Stat. 1705], approved October 19, 1982

AN ACT To provide for a continuance of civil government for the Trust Territory of the Pacific Islands.

Whereas, pursuant to the authority of Public Law 204, Eightieth Congress, approved July 18, 1947, the President approved a trusteeship agreement for the Trust Territory of the Pacific Islands between the United States Government and the Security Council of the United Nations; and

Whereas responsibility for civil administration of the Trust Territory was vested in the Secretary of the Navy by Executive Order Number 9875 of July 18, 1947; and

Whereas responsibility for such administration was transferred to the Secretary of the Interior, effective July 1, 1951, by Executive Order Numbered 10265 of June 29, 1951, as amended by Executive Order Numbered 10408 of November 10, 1952, and Executive Order Numbered 10470 of July 17, 1953: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a) [1] That until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such a manner and through such agency or agencies as the President of the United States may direct or authorize.

(b) [2] The head of any department, corporation, or other agency of the executive branch of the Government may, upon the request of the Secretary of the Interior, extend to the Trust Territory of the Pacific Islands, with or without reimbursement, scientific, technical, and other assistance under any program administered by such agency, or extend to the Trust Territory any Federal program administered by such agency if the assistance or program will pro-

[1] 48 U.S.C. 1681.
[2] Subsec. (b) added by sec. 1 of Public Law 88-487 (78 Stat. 601).

mote the welfare of the Trust Territory, notwithstanding any provision of law under which the Trust Territory may otherwise be ineligible for the assistance of program: *Provided,* That the Secretary of the Interior shall not request assistance pursuant to this subsection that involves, in the aggregate, an estimated nonreimbursable cost in any one fiscal year in excess of $150,000: *Provided further,* That the cost of any program extended to the Trust Territory under this subsection shall be reimbursable out of appropriations authorized and made for the government of the Trust Territory pursuant to section 2 of this Act, as amended. The provisions of this subsection shall not apply to financial assistance under a grant-in-aid program.

Sec. 2.[3] There are authorized to be appropriated not to exceed $25,000,000 for fiscal year 1967, for fiscal year 1975, $75,000,000; for fiscal year 1976, $80,000,000; for the period beginning July 1, 1976, and ending September 30, 1976, $15,100,000; for fiscal year 1977, $80,000,000; and such amounts as were authorized but not appropriated for fiscal years 1975, 1976, and 1977; for fiscal year 1978, $90,000,000; for fiscal year 1979, $122,700,000; for fiscal year 1980, $112,000,000; for fiscal years after fiscal 1980, such sums as may be necessary, including, but not limited to, sums needed for completion of the capital improvement program; for a basic communications system; for a feasibility study and construction of hydroelectric project on Ponape; for expenditure by grant or contract for the installation, operation, and maintenance of communications systems which will provide internal and external communications; [4] and up to but not to exceed $8,000,000 for the construction of such buildings as are required for a four-year college to serve the Micronesian community (no appropriations for the construction of such buildings shall, however, be made (A) until, but not later than one year after the date of the enactment of this Act, the President causes a study to be made by an appropriate authority to determine the educational need and the most suitable educational concept for such a college and transmits such study, together with his recommendations, to the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States within said one year period and (B) until 90 calendar days after the receipt of such study and recommendations which shall be deemed approved unless specifically disapproved by resolution of either such committee), and $1,800,000 for a human development project in the Marshall Islands plus such sums as are necessary, for each fiscal years, or periods, to offset reductions in, or the termination of Federal grants-in-aid programs or other funds made available to the Trust Territory of the Pacific Islands by other Federal agencies, to remain available until expended, to carry out the provisions of this Act and to provide for a program of necessary capital improvements and public works related to health, education, utilities, highways, transportation facilities, communications,

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[3] 48 U.S.C. 1681 note. The language in sec. 2 concerning the authorization of funds after fiscal year 1980 was added by sec. 101 of Public Law 96-205 (94 Stat. 84). Sec. 2 had previously been amended by Public Law 90-16 (81 Stat. 15), by Public Law 90-617 (82 Stat. 1213), by Public Law 91-578 (84 Stat. 1559), by Public Law 93-111 (87 Stat. 354), by Public Law 94-27 (89 Stat. 95), by Public Law 94-255 (90 Stat. 299, and Public Law 95-134 (91 Stat. 1159).

[4] Sec. 401 of Public Law 96-597 (94 Stat. 3478) added this phrase.

and public buildings: *Provided,* That except for funds appropriated for the activities of the Peace Corps no funds appropriated by any Act shall be used for administration of the Trust Territory of the Pacific Islands except as may be specifically authorized by law.

Sec. 3.[5] There are hereby authorized to be appropriated such sums as the Secretary of the Interior may find necessary, but not to exceed $10,000,000 for any one year, to alleviate suffering and damage resulting from major disasters that occur in the Trust Territory of the Pacific Islands. Such sums shall be in addition to those authorized in section 2 of this Act and shall not be subject to the limitations imposed by section 2 of this Act. The Secretary of the Interior shall determine whether or not a major disaster has occurred in accordance with the principles and policies of sections 102(2) and 301 of the Disaster Relief Act of 1974.

Sec. 4.[6] (a) The following functions, powers, and duties heretofore vested in the government comptroller for Guam with respect to the government of the Trust Territory of the Pacific Islands and the government of the Northern Mariana Islands are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands:

(1) The authority to audit all accounts pertaining to the revenue and receipts of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands, and to funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the aforementioned governments including those pertaining to trust funds held by such governments.

(2) The authority to report to the Secretary of the Interior, the High Commissioner of the Trust Territory of the Pacific Islands, the chief executives of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands all failures to collect amounts due the governments, and expenditures of funds or uses of property which are irregular or not pursuant to law.

(b) The authority granted in paragraph (a) shall extend to all activities of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended. This section is not subject to termination under section

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[5] 48 U.S.C. 1681 note. Sec. 3 was added by sec. 2 of Public Law 90-617 (82 Stat. 1213). Sec. 301(k) of Public Law 91-606 (84 Stat. 1759), inserted the phrase "section 102(1) of the Disaster Relief Act of 1970" for the phrase "section 2 of the Act of September 30, 1950 (64 Stat. 1109), as amended (42 U.S.C. 1855a)". Subsequently, sec. 602(k) of Public Law 93-288 (88 Stat. 164) substituted the reference to secs. 102(2) and 301 of the Disaster Relief Act of 1974 in lieu of the reference to the Disaster Relief Act of 1970.

[6] 48 U.S.C. 1681b. Sec. 203(b) of the Public Law 97-357 (96 Stat. 1707) added sec. 4. A previous sec. 4, as added by sec. 2 of Public Law 93-111 (87 Stat. 354) and amended by sec. 203(b) of Public Law 95-134 (91 Stat. 1162) and sec. 201(b) of Public Law 96-205 (94 Stat. 85), was repealed by sec. 203(b) of Public Law 97-357. The previous sec. 4 related to duties of the government comptroller for Guam in addition to those imposed by the Organic Act of Guam.

502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263, 268).

(c) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for Guam related to its audit function, with respect to the government of the Trust Territory of the Public Islands and the government of the Northern Mariana Islands are hereby transferred to the Office of Inspector General, Department of the Interior.

(2) Trust Territory Economic Development Loan Fund

Public Law 92-257 [S. 806], 86 Stat. 87; 48 U.S.C. 1688-1693, approved March 21, 1972 as amended by Public Law 97-357 [H.R. 5139], 96 Stat. 1705, approved October 19, 1982

AN ACT Relating to the Trust Territory of the Pacific Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. For the purpose of promoting economic development in the Trust Territory of the Pacific Islands, there is authorized to be appropriated to the Secretary of the Interior, for payment to the government of the Trust Territory of the Pacific Islands as a grant in accordance with the provisions of this title, an amount which when added to the development fund established pursuant to section 3 of the Act of August 22, 1964 (78 Stat. 601), as augmented by subsequent Federal grants, will create a total fund of $5,000,000, which shall thereafter be known as the Trust Territory Economic Development Loan Fund.

Sec. 2. The grant authorized by section 1 shall be made only after the government of the Trust Territory of the Pacific Islands has submitted to the Secretary of the Interior a plan for the use of the grant, and the plan has been approved by the Secretary. The plan shall provide among other things for a revolving fund to make loans or to guarantee loans to private enterprise. The term of any loan made pursuant to the plan shall not exceed twenty-five years.

Sec. 3. No loan or loan guarantee shall be made under this title to any applicant who does not satisfy the territorial administering agency that financing is otherwise unavailable on reasonable terms and conditions. No loan or loan guarantee shall exceed (1) the amount which can reasonably be expected to be repaid, (2) the minimum amount necessary to accomplish the purposes of this title, or 25 per centum of the funds appropriated pursuant to section 1. No loan guarantee shall guarantee more than 90 per centum of the outstanding amount of any loan, and the reserves maintained to guarantee the loan shall not be less than the 25 per centum of the guarantee.

Sec. 4. The plan provided for in section 2 shall set forth such fiscal control and accounting procedures as may be necessary to assure proper disbursement, repayment, and accounting for such funds.

Sec. 5.[1] The chief executives of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the North-

[1] Sec. 203(a) of Public Law 97-357 (96 Stat. 1707) amended and restated sec. 5. It previously read as follows:
"Sec. 5. The High Commissioner of the Trust Territory of the Pacific Islands shall make an annual report to the Secretary of the Interior on the administration of this title."

ern Mariana Islands shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The chief executives shall transmit the comprehensive annual financial report to the Inspector General of the Department of the Interior who shall audit it and report his findings to the Congress. The chief executives shall also make such other reports at such other times as may be required by the Congress or under applicable Federal laws. The chief executives shall submit to the Congress, the Secretary of the Interior, the High Commissioner of the Trust Territory of the Pacific Islands, and the cognizant Federal auditors a written statement of actions taken or contemplated on Federal audit recommendations within sixty days after the issuance date of the audit report. This section is not subject to termination under section 502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263, 268).

Sec. 6. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any relevant books, documents, papers, or records of the government of the Trust Territory of the Pacific Islands.

d. Czechoslovakian Claims Settlement Act of 1981

Public Law 97-127 [S. 1946], 95 Stat. 1675, approved December 29, 1981

AN ACT To provide for the final settlement of certain claims against Czechoslovakia, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Czechoslovakian Claims Settlement Act of 1981".[1]

APPROVAL OF AGREEMENT

Sec. 2. (a) The Congress hereby approves the Agreement between the Government of the United States of America and the Government of the Czechoslovak Socialist Republic on the Settlement of Certain Outstanding Claims and Financial Issues, initiated at Prague, Czechoslovakia on November 6, 1981.

(b) The President may, without further approval by the Congress, execute such technical revisions of the Agreement approved by subsection (a) of this section as in his judgment may from time to time be required to facilitate the implementation of that Agreement. Nothing in this subsection shall be construed to authorize any revision of that Agreement to reduce any amount to be paid by the Government of the Czechoslovak Socialist Republic to the United States Government under the Agreement, or to defer the payment of any such amount.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) "Agreement" means the Agreement on the Settlement of Certain Outstanding Claims and Financial Issues approved by section 2(a) of this Act;

(2) "national of the United States" has the meaning given such term by section 401(1) of the International Claims Settlement Act of 1949; [2]

(3) "Commission" means the Foreign Claims Settlement Commission of the United States;

(4) "Fund" means the Czechoslovakian Claims Fund established by section 402(b) of the International Claims Settlement Act of 1949;

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[1] 22 U.S.C. note prec. 1642. See also title IV of the International Claims Settlement Act of 1949 (Public Law 81-455; 22 U.S.C. 1642-1642q), page 480 for additional legislation on claims against Czechoslovakia.

[2] For text, see page 480.

(5) "Secretary" means the Secretary of the Treasury; and
(6) "property" means any property, right, or interest.

THE FUND

Sec. 4. (a) The Secretary shall cover into the Fund the amount paid by the Government of the Czechoslovak Socialist Republic in settlement and discharge of claims of nationals of the United States pursuant to article 1(1) of the Agreement, and shall deduct from that amount $50,000 for reimbursement to the United States Government for expenses incurred by the Department of the Treasury and the Commission in the administration of this Act and title IV of the International Claims Settlement Act of 1949. The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts. The deduction required by this subsection shall be made in lieu of the deduction provided in section 402(e) of the International Claims Settlement Act of 1949; [3] however, it is the sense of the Congress that the United States Government is entitled to a larger percentage of the total award (generally presumed to be 5 percent) and that the ex gratia payment hereinafter provide to certain claimants, who were otherwise excluded from sharing in this claims settlement under general-accepted principles of international law and United States practice, is justified only by the extraordinary circumstances of this case and does not establish any precedent for future claims negotiations or payments.

(b) The Secretary shall establish three accounts in the Fund into which the amount covered into the Fund pursuant to subsection (a) of this section, less the deduction required by that subsection, shall be covered as follows:

(1) An account into which $74,550,000 shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards certified pursuant to section 410 of the International Claims Settlement Act of 1949.[4]

(2) An account into which $1,500,000 shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards determined pursuant to section 5 of this Act.

(3) An account into which the remainder of amounts in the Fund shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards determined pursuant to section 6 of this Act.

DETERMINATION OF CERTAIN CLAIMS

Sec. 5. (a) The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic of losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and the date of which the Agreement enters into force. In making the determination with respect to the validity and amount

[3] For text, see page 481.
[4] For text, see page 484.

of any such claim and the value of the property taken, the Commission is authorized to accept the fair or proved value of such property as of the time when the property taken was last operated, used, managed, or controlled by the national or nationals of the United States asserting the claim, regardless of whether such time is prior to the actual date of nationalization or other taking by the Government of the Czechoslovak Socialist Republic.

(b) The Commission shall certify to the Secretary the amount of any award determined pursuant to subsection (a).

DETERMINATION OF OTHER CLAIMS

Sec. 6. (a)(1) The Congress finds that—

(A) in the case of certain persons holding claims against the Czechoslovakian Government who became nationals of the United States by February 26, 1948, the date on which the current Communist Government of Czechoslovakia assumed power; and

(B) while the Commission had the authority to deny those claims described in subparagraph (A) on the basis that the properties involved had been taken by the Benes Government while the claimants were not yet nationals of the United States, the effect of that denial is to withhold compensation to persons who have been United States citizens for many years and whose expropriated property has benefited the Communist Government of Czechoslovakia no less than properties expropriated more directly and clearly by the Communist Government.

(2)(A) It is therefore the purpose of this section, in accordance with the intent of the Congress in enacting title IV of the International Claims Settlement Act of 1949 and in the interests of equity, to make ex gratia payments to the claimants described in paragraph (1) of this subsection.

(B) The Congress reaffirms the principle and practice of the United States to seek compensation from foreign governments on behalf only of persons who were nationals of the United States at the time they sustained losses by the nationalization or other taking of their property by those foreign governments. In making payments under this section, the Congress does not establish any precedent for future claims payments.

(b) The Commission shall reopen and redetermine the validity and amounts of any claim against the Government of Czechoslovakia which was filed with the Commission in accordance with the provisions of title IV of the International Claims Settlement Act of 1945,[5] which was based on property found by the Commission to have been nationalized or taken by the Government of Czechoslovakia on or after January 1, 1945, and before February 26, 1948, and which was denied by the Commission because such property was not owned by a person who was a national of the United States on the date of such nationalization or taking. The provisions of section 405 of the International Claims Settlement Act of 1949 requiring that the property upon which a claim is based must have

[5] For text, see page 480.

been owned by a national of the United States on the date of nationalization or other taking by the Government of Czechoslovakia shall be deemed to be met if such property was owned on such date by a person who became a national of the United States on or before February 26, 1948. The Commission shall certify to the Secretary the amount of any award determined pursuant to this subsection.

PROCEDURES

Sec. 7. (a) The provisions of sections 401, 403, 405, 406, 407, 408, 409, 414, 415, and 416 of the International Claims Settlement Act of 1949,[6] to the extent that such provisions are not inconsistent with this Act, together with such regulations as the Commission may prescribe, shall apply with respect to any claim determined pursuant to section 5(a) of this Act or redetermined pursuant to section 6(b) of this Act.

(b) Not later than sixty days after the date of the enactment of this Act, the Commission shall establish and publish in the Federal Register a period of time within which claims described in section 5 of the Act must be filed with the Commission, and the date for the completion of the Commission's affairs in connection with the determination of those such claims and claims described in section 6 of this Act. Such filing period shall be not more than one year after the date of such publication in the Federal Register, and such completion date shall be not more than two years after the final date for the filing of claims under section 5. No person holding a claim to which section 6 of this Act applies shall be required to refile that claim before the Commission makes the redetermination required by that section.

PAYMENT OF AWARDS

Sec. 8. (a) As soon as practicable after the date of the enactment of this Act, the Secretary shall make payments from amounts in the account established pursuant to section 4(b)(1) of this Act on the unpaid balance of each award certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.[4]

(b) As soon as practicable after the Commission has completed the certification of awards pursuant to section 5(b) of this Act, the Secretary shall make payments on account of each such award from the amounts in the account established pursuant to section 4(b)(2) of this Act.

(c) As soon as practicable after the Commission has completed the certification of awards pursuant to section 6(b) of this Act, the Secretary shall make payments on account of each such award from the amounts in the account established pursuant to section 4(b)(3) of this Act.

(d) In the event that—

(1) the amounts in the account established pursuant to section 4(b)(2) of this Act exceed the aggregate total of all awards

[6] For text, see pages 480–485.

certified by the Commission pursuant to section 5(b) of this Act, or

(2) the amounts in the account established pursuant to section 4(b)(3) of this Act exceed the aggregate total of all awards certified by the Commission pursuant to section 6(b) of this Act,

the Secretary shall cover such excess amounts into the account established pursuant to section 4(b)(1) of this Act. The Secretary shall make payments pursuant to subsection (a) of this section, from such excess amounts, on the unpaid balance of awards certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.[4]

(e) Payments under this section shall be made on the unpaid balance of each award which bear to such unpaid balance the same proportion as the total amount in the account in the Fund from which the payments are made bears to the aggregate unpaid balance of all awards payable from that account. Payments under this section, and applications for such payments, shall be made in accordance with such regulations as the Secretary may prescribe.

(f) In the event that—

(1) the Secretary is unable, within three years after the date of the establishment of the account prescribed by section 4(b)(1) of this Act, to locate any person entitled to receive payment under this section on account of an award certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949 [4] or to locate any lawful heirs, successors, or legal representatives of that person, or if no valid application for payment is made by or on behalf of that person within six months after the Secretary has located that person or that person's heirs, successors, or legal representatives; or

(2) within six months after the Commission has completed the certification of awards pursuant to sections 5(b) and 6(b) of this Act, no valid application for payment is made by or on behalf of any person entitled to receive payment under this section on account of an award certified by the Commission pursuant to either such section,

the Secretary shall give notice by publication in the Federal Register and in such other publications as the Secretary may determine that, unless valid application for payment is made within sixty days after the date of such publication, that person's award under title IV of the International Claims Settlement Act of 1949 [5] or this Act, as the case may be, and that person's right to receive payment on account of such award, shall lapse. Upon the expiration of such sixty-day period that person's award and right to receive payment shall lapse, and the amounts payable to that person shall be paid pro rata by the Secretary on account of all other awards under title IV of the International Claims Settlement Act of 1949 [5] or this Act, as the case may be.

INVESTMENT OF FUNDS

Sec. 9. The Secretary shall invest and hold in separate accounts the amounts held respectively in the accounts established by sec-

tion 4 of this Act. Such investment shall be in public debt securities with maturities suitable for the needs of the separate accounts and bearing interest at rates determined by the Secretary, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest earned on the amounts in each account established by section 4 of this Act shall be used to make payments, in accordance with section 8(e) of this Act, on awards payable from that account.

IMPLEMENTATION OF AGREEMENT

Sec. 10. (a) If, within sixty days after the date of the enactment of this Act—

(1) the Government of the Czechoslovak Socialist Republic does not make the payments to the United States Government described in article 6(2) of the Agreement, or

(2) the Czechoslovak Government does not receive the gold provided in article 6(1) of the Agreement,

the provisions to this Act shall cease to be effective, and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that sixty-day period.

(b) The sixty-day period for implementation of the Agreement required by subsection (a) shall be extended by an additional period of thirty calendar days if, before the expiration of that sixty-day period, the Secretary of State certifies in writing that such extension is consistent with the purposes of this Act, and reports that certification to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate, together with a detailed statement of the reasons for the extension. If at the end of that additional thirty-day period the events set forth in paragraphs (1) and (2) of subsection (a) have not occurred, the provisions of this Act shall cease to be effective and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that thirty-day period or unless, before the expiration of that thirty-day period, authorized by joint resolution a further extension of time for implementation of the Agreement. Such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976,[7] and in the House of Representatives a motion to proceed to the consideration of such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged.

SOCIAL SECURITY AGREEMENT

Sec. 11. The Secretary of State shall conduct a detail review of the exchange of letters between the United States and Czechoslovakia providing for reciprocal social security payments to residents of the two countries. Such review should include an examination of the extent to which Czechoslovakia is complying with the spirit and provisions of the letters, a comparison of the benefits being re-

[7] For text, see Legislation on Foreign Relations Through 1988, vol. I, page 476.

alized by residents of Czechoslovakia and of the United States under the letters, and an evaluation of the basis of differences in such benefits. The Secretary of State, in consultation with the Department of Health and Human Services, shall report to the Congress, not later than six months after the date of the enactment of this Act, the results of such review, together with any recommendations for legislation or changes in the agreement made by the letters that may be necessary to achieve greater comparability and equity of benefits for the residents of the two countries. Such report should include specific assessments of the feasibility, likely effects, and advisability of terminating United States social security payments to residents of Czechoslovakia in response to inequities and incomparabilities of benefits payments under the exchange of letters.

e. Iran Claims Settlement

Partial text of Public Law 99-93 [H.R. 2068], 99 Stat. 437, approved August 16, 1985

AN ACT To authorize appropriations for fiscal years 1986 and 1987 for the Department of State, the United States Information Agency, the Board for International Broadcasting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Years 1986 and 1987".

(b) * * *

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TITLE V—IRAN CLAIMS SETTLEMENT

SEC. 501.[1] RECEIPT AND DETERMINATION OF CERTAIN CLAIMS.

(a) AUTHORITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION.—The Foreign Claims Settlement Commission of the United States is authorized to receive and determine the validity and amounts of claims by nationals of the United States against Iran which are settled en bloc by the United States. In deciding such claims, the Commission shall apply, in the following order—

(1) the terms of any settlement agreement;

(2) the relevant provisions of the Declarations of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981, giving consideration to interpretations thereof by the Iran-United States Claims Tribunal; and

(3) applicable principles of international law, justice, and equity.

Except as otherwise provided in this title, the provisions of title I of the International Claims Settlement Act of 1949 (22 U.S.C. 1621 et seq.) shall apply with respect to claims under this section. Any reference in such provisions to "this title" shall be deemed to refer to those provisions and to this section.

(b) CERTIFICATION AND PAYMENT.—The Commission shall certify to the Secretary of the Treasury any awards determined pursuant to subsection (a) in accordance with section 5 of title I of the International Claims Settlement Act of 1949 (22 U.S.C. 1624). Such awards shall be paid in accordance with sections 7 and 8 of such title (22 U.S.C. 1626 and 1627), except that—

(1) the Secretary of the Treasury is authorized to make payments pursuant to paragraphs (1) and (2) of section 8(c) of such

[1] 50 U.S.C. 1701 note.

title in the amount of $10,000 or the principal amount of the award, whichever is less; and

(2) the Secretary of the Treasury may deduct, pursuant to section 7(b) of such title, an amount calculated in accordance with section 502(a) of this Act, instead of 5 percent of payments made pursuant to section 8(c) of such title.

SEC. 502.[1] DEDUCTIONS FROM ARBITRAL AWARDS

(a) DEDUCTION FOR EXPENSES OF THE UNITED STATES.—Except as provided in section 503, the Federal Reserve Bank of New York shall deduct from the aggregate amount awarded under each enumerated claim before the Iran-United States Claims Tribunal in favor of a United States claimant, an amount equal to 1½ percent of the first $5,000,000 and 1 percent of any amount over $5,000,000, as reimbursement against Iran before the Tribunal and the maintenance of the Security Account established pursuant to the Declarations of the Democratic and Popular Republic of Algeria of January 19, 1981. The Federal Reserve Bank of New York shall made the deduction required by the preceding sentence whenever the Bank receives an amount from the Security Account in satisfaction of an award rendered by the Iran-United States Claim Tribunal on the enumerated claim involved.

(b) DEDUCTION TREATED AS MISCELLANEOUS RECEIPT.—Amounts deducted by the Federal Reserve Bank of New York pursuant to subsection (a) shall be deposited into the Treasury of the United States to the credit of miscellaneous receipts.

(c) PAYMENT TO UNITED STATES CLAIMANTS.—Nothing in this section shall be construed to effect the payment to United States claimants of amounts received by the Federal Reserve Bank of New York in respect of awards by the Iran-United States Claims Tribunal, after deduction of the amounts calculated in accordance with subsection (a).

(d) EFFECTIVE DATE.—This section shall be effective as of June 7, 1982.

SEC. 503.[1] BLOC SETTLEMENT.

The deduction by the Federal Reserve Bank of New York provided for in section 502(a) of this Act shall not apply in the case of a sum received by the Bank pursuant to an en bloc settlement of any category of claims of United States nationals against Iran when such sum is to be used for payments in satisfaction of awards certified by the Foreign Claims Settlement Commission pursuant to section 501(b) of this Act.

SEC. 504.[1] REIMBURSEMENT TO THE FEDERAL RESERVE BANK OF NEW YORK.

The Secretary of the Treasury may reimburse the Federal Reserve Bank of New York for expenses incurred by the Bank in the performance of fiscal agency agreements relating to the settlement or arbitration of claims pursuant to the Declarations of the Democratic and Popular Republic of Algeria of January 19, 1981.

SEC. 505.[1] CONFIDENTIALITY OF RECORDS.

Notwithstanding section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), records pertaining to the arbitration of claims before the Iran-United States

Claims Tribunal may not be disclosed to the general public, except that—

(1) rules, awards, and other decisions of the Tribunal and claims and responsive pleadings filed at the Tribunal by the United States on its own behalf shall be made available to the public, unless the Secretary of State determines that public disclosure would be prejudicial to the interests of the United States or United States claimants in proceedings before the Tribunal, or that public disclosure would be contrary to the rules of the Tribunal; and

(2) the Secretary of State may determine on case-by-case basis to make such information available when in the judgment of the Secretary the interests of justice so require.

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4. Registration of Foreign Agents

a. The Foreign Agents Registration Act of 1938, as amended [1]

PART I—REGISTRATION OF FOREIGN PROPAGANDISTS

Public Law 75-583 [H.R. 1591], 52 Stat. 631; 22 U.S.C. 611-621, approved June 8, 1938, as amended by Public Law 76-319 [H.R. 5988], 53 Stat. 1244, approved August 7, 1939; by Public Law 77-532 [S. 2399], 56 Stat. 248, approved April 29, 1942; by Public Law 81-642 [H.R. 4386], 64 Stat. 399, approved August 3, 1950; by Public Law 82-414 [H.R. 5678], 66 Stat. 163 at 276, approved June 27, 1952; by Public Law 87-366 [H.R. 470], 75 Stat. 784, approved October 4, 1961; by Public Law 89-486 [S. 693], 80 Stat. 244, approved July 4, 1966; by Public Law 91-375 [H.R. 17070], 84 Stat. 719 at 782, approved August 12, 1970; and by Public Law 98-620 [H.R. 6163], 98 Stat. 3335 at 3359, approved November 11, 1984

AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy and purpose of this Act to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in light of their associations and activities.[2]

Section 1. Definitions.[3]—Used in and for the purposes of this Act—

(a) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

(b) [4] The term "foreign principal" includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

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[1] 22 U.S.C. 611-621. The Foreign Agents Registration Act of 1938, as amended, will be referred to as the FAR Act and "this Act" in footnotes.

[2] Declaration of policy and purpose added by the Act of Apr. 29, 1942 (56 Stat. 248).

[3] The Act of Aug. 7, 1939 (53 Stat. 1244); the Act of Jan. 24, 1942 (56 Stat. 248), and the Act of July 4, 1966 (80 Stat. 244), generally redefined the terms of this Act.

[4] This term was reduced in scope by Public Law 89-486 (80 Stat. 244).

(3) a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c) [5] Except as provided in subsection (d) hereof, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages with the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

(d) [6] The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of title 39 published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefore, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in section 1(b) hereof, or by any agent of a foreign principal required to register under this Act;

(e) [7] The term "government of a foreign country" includes any person or group of persons exercising sovereign *de facto* or *de jure*

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[5] As amended and restated by Public Law 89-486 (80 Stat. 244), with former secs. (c)(3) and (c)(4) deleted. Former subsec. (c)(5) inserted by the Act of Sept. 23, 1950 (64 Stat. 1005), was deleted by the Act of Aug. 1, 1956 (70 Stat. 899), and is now covered by 50 U.S.C. 851-858 (1964).

[6] Subsecs. (d) and (g) were added by the Act of Apr. 29, 1942 (56 Stat. 248), and amended by Public Law 89-486 (80 Stat. 244).

[7] Subsecs. (d) through (n) were added by the Act of Apr. 29, 1942 (56 Stat. 248).

political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

(f) [7] The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof;

(g) [6] The term "public-relations counsel" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal;

(h) [7] The term "publicity agent" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

(i) [7] The term "information-service employee" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(j) [7] The term "political propaganda" includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, covert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this section 1(j) the term "dis-

seminating" includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;

(k) [7] The term "registration statement" means the registration statement required to be filed with the Attorney General under section 2(a) hereof, and any supplements thereto required to be filed under section 2(b) hereof, and includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

(l) [7] The term "American republic" includes any of the States which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940; [8]

(m) [7] The term "United States," when used in a geographical sense includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States; [9]

(n) [7] The term "prints" means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter.

(o) [10] The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

(p) [10] The term "political consultant" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party;

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[8] the Act of Habana, E.A.S. Doc. No. 199 is found in 54 Stat. 2491. The 21 signatories thereto were: Honduras, Haiti, Costa Rica, Mexico, Argentina, Uruguay, Ecuador, Bolivia, Chile, Brazil, Cuba, Paraguay, Panama, Colombia, Venezuela, El Salvador, Dominican Republic, Peru, Nicaragua, Guatemala, United States of America.

[9] Pursuant to Proclamation No. 2695, 11 F.R. 7517 (60 Stat. 1352), granting independence to the Philippines, the words "including the Philippine Islands" were deleted from the definition of the United States.

[10] Subsecs. (o) through (q) were added by the Act of July 4, 1966, (80 Stat. 244).

(q) [10] For the purpose of section (3)(d) hereof, activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic person engaged in substantial commercial, industrial or financial operations in the United States shall not be deemed to serve predominantly a foreign interest because such activities also benefit the interests of a foreign person engaged in bona fide trade or commerce which is owned or controlled by, or which owns or controls, such domestic person: *Provided,* That (i) such foreign person is not, and such activities are not directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in substantial part by, a government of a foreign country or a foreign political party, (ii) the identity of such foreign person is disclosed to the agency or official of the United States with whom such activities are conducted, and (iii) whenever such foreign person owns or controls such domestic person, such activities are substantially in furtherance of the bona fide commercial, industrial or financial interests of such domestic person.

Sec. 2. Registration.—(a) [11] No person shall act as an agent of a foreign principal unless he has filed with the Attorney General [12] a true and complete registration statement and supplements thereto as required by this section 2(a) and section 2(b) hereof or unless he is exempt from registration under the provisions of this Act. Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal. The registration statement shall include the following which shall be regarded as material for the purposes of this Act:

(1) [13] Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2) [13] Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation,

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[11] This section was reworded by the Act of July 4, 1966 (80 Stat. 244 at 245). It was previously amended and restated by Public Law 81-642 (64 Stat. 400).

[12] Pursuant to sec. 2 of the Act of Apr. 29, 1942 (56 Stat. 251), and by virtue of Executive Order 9176, effective June 1, 1942, registration functions under this Act were transferred from the Secretary of State to the Attorney General. Under 18 U.S.C. 951, it is a criminal offense for one, other than a diplomatic or consular officer, to act as a foreign agent without prior notification to the Secretary of State.

[13] Pars. (1) through (11) of subsec. (a) were added by the Act of Apr. 29, 1942 (56 Stat. 249), in order to provide detailed appraisal as to the comprehensive information required in the registration statement. The latter act also extended the registration provisions so as to require disclosure of all activities of the registrant, that "as agent" and those "for himself".

association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

(3) [13] A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each; [14] the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal;

(4) [13] Copies of each written agreement, and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity; [15]

(5) [13] The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6) [13] A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder, including a detailed statement of any such activity which is a political activity; [15]

(7) [13, 16] The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any gov-

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[14] The text "unless, and to the extent, this requirement is waived in writing by the Attorney General;" which previously followed this point, was deleted by the Act of July 4, 1966 (80 Stat. 244, 245).

[15] The words "including a detailed statement of any such activity which is a political activity" were added by the Act of July 4, 1966 (80 Stat. 244, 245).

[16] This paragraph was amended by the Act of July 4, 1966, 80 Stat. 244, 245–246.

ernment of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8) [16] A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 [17] of Title 18, United States Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

(9) [13] Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10) [13] Such other statements, information, or documents pertinent to the purposes of this Act as the Attorney General, having due regard for the national security and the public interests, may from time to time require;

(11) [13] Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b) [18] Every agent of a foreign principal who has filed a registration statement required by section 2(a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), and (9) of section 2(a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes

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[17] Sec. 613 was repealed May 11, 1976, by Public Law 94-283 (90 Stat. 496).

[18] Subsecs. (b), (d), and (e) were amended and restated by Public Law 77-352 (56 Stat. 248).

occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d) [18] The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for a willful failure to file a registration statement or supplement thereto when due or for willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e) [18] If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of section 2386 of title 18,[19] the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of said section.[19]

(f) [20] The Attorney General may, by regulation, provide for the exemption—

(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and public interest, determines that such registration, or

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[19] The Act of June 25, 1948 (62 Stat. 838) substituted "section 2386 of title 18" in lieu of "sections 14 to 17 of title 18". Originally "section 2386 of title 18" and "said section" respectively, read "the Act of October 17, 1940 (54 Stat, 1201)", which had been classified to sec. 14 to 17 of title 18.

[20] Subsec. (f) was added by the Act of July 4, 1966 (80 Stat. 244, 246).

the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act.

Sec. 3.[21] **Exemptions.**—The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

(d) [22] Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 4),[23] and such rules and regulations as may be prescribed thereunder;

(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while, (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communi-

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[21] Exemption provisions of this act were amended by the Act of Apr. 29, 1942, 56 Stat. 248, and by the Act of July 4, 1966 (80 Stat. 244, 246).

[22] Subsec. (d) was amended by the Act of Oct. 4, 1961 (75 Stat. 784), and by the Act of July 4, 1966 (80 Stat. 244, 246).

[23] 22 U.S.C. 441, 444, 445, 447–451, 453–457.

cation or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to, and retention for the duration of this Act by, the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the government of which such person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee; [24]

(g) [25] Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purpose of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal.

Sec. 4.[26] **Filing and Labeling of Political Propaganda.**—(a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, dis-

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[24] By letter dated Sept. 30, 1946, the President withdrew from consideration all countries previously designated as entitled to the exemption provided by sec. 3(f).

[25] Subsec. (g) was added by the Act of July 4, 1966 (80 Stat. 244, 246).

[26] This provision was added by the Act of Apr. 29, 1942 (56 Stat. 248, 254–5), and as amended by the Act of July 4, 1966 (80 Stat. 244, 246), and provides that two copies of the political propaganda are to be filed with the Attorney General. Originally, sec. 4 had related to retention of statements as public records, a provision which was incorporated into sec. 6 by the 1942 act.

seminated or circulated among two or more persons, unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda; that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of such foreign principal; that, as required by this Act, his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

(c) [27] The copies of political propaganda required by this Act to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688),[28] and of all foreign prints excluded from the mails under authority of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230).[29]

Notwithstanding the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688),[28] and of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230),[29] the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e) [30] It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this Act to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to re-

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[27] Subsec. (c) was amended by the Act of July 4, 1966 (80 Stat. 244 at 247), to provide that the political propaganda filed with the Attorney General shall be available for public inspection.

[28] 19 U.S.C. 1305 (1970).

[29] 18 U.S.C. 1717 (1970).

[30] Subsecs. (e) and (f) were added by the Act of July 4, 1966 (80 Stat. 244 at 247).

quest from any such agency or official for or in the interest of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

(f) [30] Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony.

Sec. 5.[31] **Books and Records.**—Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

Sec. 6.[32] **Public Examination of Official Record.**—(a) The Attorney General shall retain in permanent form one copy of all registration statements and all statements concerning the distribution of political propaganda furnished until this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this Act.

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[31] Sec. 5 was amended and restated by the Act of Apr. 29, 1942 (56 Stat. 248), with the phrase "in accordance with such business and accounting practices" added by Public Law 89–486 (80 Stat. 244).

[32] Subsec. (a) was amended and restated by the Act of Apr. 29, 1942 (56 Stat. 248). Subsecs. (b) and (c) were added by Public Law 89–486 (80 Stat. 244).

(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

(c) The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof, copies of political propaganda, or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act.

Sec. 7.[33] **Liability of Officers.**—Each officer, or person performing the functions of an officer, and each director or person performing the functions of a director, of an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute and file a registration statement and supplements thereto as and when such filing is required under sections 2(a) and 2(b) hereof and shall also be under obligation to cause such agent to comply with all the requirements of sections 4(a), 4(b), and 5 and all other requirements of this Act. Dissolution of any organization acting as an agent of a foreign principal shall not relieve any officer, or person performing the functions of an officer, or any director, or person performing the functions of a director, from complying with the provisions of this section. In case of failure of any such agent of a foreign principal to comply with any of the requirements of this Act, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

Sec. 8.[34] **Enforcement and Penalties.**—(a) Any person who—

(1) willfully violates any provisions of this Act or any regulations thereunder, or

(2) in any registration statement or supplement thereto or in any statement under section 4(a) hereof concerning the distribution of political propaganda or in any other documents filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, except that in case of a violation of subsection (b), (e), or (f) section 4 or of subsection (g) or (h) of this section

[33] Sec. 7 was amended and restated by the Act of Apr. 29, 1942; further amended and restated by sec. 2 of Public Law 81-642 (64 Stat. 400).

[34] Sec. 8 was added by the Act of Apr. 29, 1942 (56 Stat. 248).

the punishment shall be a fine of not more than $5,000 or imprisonment for not more than six months, or both.[35]

(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

(c) [36] Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provisions of this Act or any regulation thereunder shall be subject to deportation in the manner provided by sections 241–243 of the Immigration and Nationality Act of 1952 (66 Stat. 204).[37]

(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1(j) hereof in the form of prints or in any other form reasonably adapted to, or reasonably appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.

(e) [38] Failure to file any such registration statement or supplements thereto as is required by either section 2(a) or section 2(b) shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(f) [39] Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper.[40]

(g) [39] If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the

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[35] The exception provision was added by sec. 7(1) of Public Law 89–486 (80 Stat. 248).

[36] Subsec. (c) was amended by sec. 402(d) of the Immigration and Nationality Act of 1952 (66 Stat. 276).

[37] 8 U.S.C. 1251–1253.

[38] Subsec. (e) was added by the Act of Sept. 23, 1950 (64 Stat. 1005).

[39] Subsecs. (f) through (h) were added by the Act of July 4, 1966 (80 Stat. 244, 248).

[40] Sec. 402(26) of Public Law 98–620 (98 Stat. 3359) deleted the sentence "The proceedings shall be made a preferred cause and shall be expedited in every way." which previously appeared at this point.

regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this Act and the regulations issued thereunder.

(h) [39] It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either expressed or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.

Sec. 9. [41] **Applicability of Act.**—This Act shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.[42]

Sec. 10.[43] **Rules and Regulations.**—The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this Act.

Sec. 11.[43] **Reports to the Congress.**—The Attorney General shall, from time to time, make a report to the Congress concerning the administration of this Act, including the nature, sources, and content of political propaganda disseminated or distributed.

Sec. 12.[43] **Separability of Provisions.**—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 13.[43] This Act is in addition to and not in substitution for any other existing statute.

Sec. 14.[43] **Short Title.**—The Act may be cited as the "Foreign Agents Registration Act of 1938, as amended."

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[41] Sec. 9 was added by the Act of Apr. 29, 1942, 56 Stat. 248, 257.

[42] Words "including the Philippine Islands" were deleted pursuant to proclamation granting independence thereto. See note 9, supra.

[43] Secs. 10 through 14 were added by the Act of Apr. 29, 1942 (56 Stat. 248 at 257-8).

b. Contributions by Agents of Foreign Principals and Conflicts of Interest

Partial text of Public Law 89-486 [S. 693], 80 Stat. 248, approved July 4, 1966, as amended by Public Law 93-443 [S. 3044], 88 Stat. 1263, approved October 15, 1974

AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 8. (a) * * * [1]

(b) Chapter 11 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 219. Officers and employees acting as agents of foreign principals

"Whoever being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection

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[1] Sec. 8(a) of this Act added a new sec. 613 to ch. 20 of title 18, U.S.C., concerning contributions by foreign nationals. However, such section 613 was repealed by sec. 201(a) of the Federal Election Campaign Act (Public Law 94-283; 90 Stat. 496). Public Law 94-283 further added a new sec. 324 (2 U.S.C. 441e) to the Federal Election Campaign Act of 1971 which became the new law regarding contributions of foreign nationals. The text of sec. 324 is as follows:

"CONTRIBUTIONS BY FOREIGN NATIONALS

"SEC. 324. (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

"(b) As used in this section, the term 'foreign national' means—

"(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)), except that the term 'foreign national' shall not include any individual who is a citizen of the United States; or

"(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))."

in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended."

* * * * * * *

c. Agents of Foreign Governments

Title 18, United States Code.[1] * * *

§ 951. Agents of foreign governments

(a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined not more than $75,000 or imprisoned not more than ten years, or both.

(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.

(c) The Attorney General shall, upon receipt, promptly transmit one copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.

(d) For purposes of this section, the term "agent of a foreign government" means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include—

(1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(2) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(3) any officially and publicly acknowledged and sponsored member of the staff of, or employer of, an officer, official, or representative described in paragraph (1) or (2), who is not a United States citizen; or

(4) any person engaged in a legal commercial transaction.

(e) [2] Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

(2) such person—

(A) is an agent of the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba, unless the Attorney General, after consultation with the Secretary of State, determines and

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[1] Sec. 951 was enacted as part of Public Law 80-772 (62 Stat. 743).

[2] Subsec. (e) was added by sec. 703 of Public Law 99-569 (100 Stat. 3205).

so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title [3] or under section 11 [4] of the Export Administration Act of 1979, except that the provisions of the subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.

[3] 18 U.S.C. 792–799.
[4] 50 U.S.C. app. 2410.

5. Logan Act—Private Correspondence With Foreign Governments

Partial text of Public Law 80-772 [H.R. 3190], 62 Stat. 744; 18 U.S.C. 953, approved June 25, 1948 (original legislation approved Jan. 30, 1799, 1 Stat. 613)

AN ACT To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 18 of the United States Code, entitled "Crimes and Criminal Procedure", is hereby revised, codified, and enacted into positive law, and may be cited as "Title 18, U.S.C., §----", as follows:

* * * * * * *

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

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6. Restriction on Intelligence Agency Cooperation with South Africa

Partial text of Public Law 99-569 [H.R. 4759], 100 Stat. 3190 at 3191, approved October 27, 1986

AN ACT To authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1987".

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RESTRICTION ON INTELLIGENCE AGENCY COOPERATION WITH SOUTH AFRICA

SEC. 107.[1] No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.[2]

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[1] 22 U.S.C. 5072a.
[1] 50 U.S.C. 413.

7. Policy on Recognition of the Palestine Liberation Organization

Partial text of Public Law 99-591 [Foreign Assistance and Related Programs Appropriations Act, 1987; Sec. 101(f) of the Continuing Appropriations, Fiscal Year 1987; H.J. Res. 738], 100 Stat. 3341-214 at 3341-231, approved October 30, 1986

JOINT RESOLUTION Making continuing appropriations for the fiscal year 1987, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE V—GENERAL PROVISIONS

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SEC. 530. In reaffirmation of the 1975 memorandum of agreement between the United States and Israel, and in accordance with section 1302 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83), no employee of or individual acting on behalf of the United States Government shall recognize or negotiate with the Palestine Liberation Organization or representatives thereof, so long as the Palestine Liberation Organization does not recognize Israel's right to exist, does not accept Security Council Resolutions 242 and 338, and does not renounce the use of terrorism.

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8. Neutrality Act and Related Material

a. Neutrality Act of 1939, as amended

Public Resolution 76–54 [H.J. Res. 306], 54 Stat. 4, approved November 4, 1939, as amended by Public Resolution 76–87 [S.J. Res. 279], 54 Stat. 611, approved June 26, 1940; by Public Law 76–776 [H.R. 10213], 54 Stat. 866, approved August 27, 1940; by Public Law 77–294 [H.J. Res. 237], 55 Stat. 764, approved November 17, 1941; by Public Law 77–459 [S.J. Res. 133], 56 Stat. 95, approved February 21, 1942; by Presidential Proclamation 2695, 11 F.R. 7517, 60 Stat. 1352, approved July 4, 1946; and by Public Law 83–665 [Mutual Security Act of 1954; H.R. 9678], 68 Stat. 861, approved August 26, 1954

JOINT RESOLUTION To preserve the neutrality and the peace of the United States and to secure the safety of its citizens and their interests.

Whereas the United States, desiring to preserve its neutrality in wars between foreign states and desiring also to avoid involvement therein, voluntarily imposes upon its nationals by domestic legislation the restrictions set out in this joint resolution; and

Whereas by so doing the United States waives none of its own rights or privileges, or those of any of its nationals, under international law, and expressly reserves all the rights and privileges to which it and its nationals are entitled under the law of nations; and

Whereas the United States hereby expressly reserves the right to repeal, change or modify this joint resolution or any other domestic legislation in the interests of the peace, security or welfare of the United States and its people: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

PROCLAMATION OF A STATE OF WAR BETWEEN FOREIGN STATES

Section 1.[1] (a) That whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war.

(b) Whenever the state of war which shall have caused the President to issue any proclamation under the authority of this section shall have ceased to exist with respect to any state named in such proclamation, he shall revoke such proclamation with respect to such state.

Sec. 2.[2] * * * [Repealed—1941]

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[1] 22 U.S.C. 441.

[2] Sec. 2, which concerned commerce with states engaged in armed conflict, was repealed by Public Law 77–294 (55 Stat. 764).

Sec. 3.[3] * * * [Repealed—1941]

AMERICAN RED CROSS

Sec. 4.[4] (a) The provisions of section 2(a)[2] shall not prohibit the transportation by vessels, unarmed and not under convoy, under charter or other direction and control of the American Red Cross of officers and American Red Cross personnel, medical personnel, and medical supplies, food, and clothing, for the relief of human suffering: *Provided,* That where permission has not been given by the blockading power, no American Red Cross vessel shall enter a port where a blockade by aircraft, surface vessel, or submarine is being attempted through the destruction of vessels, or into a port of any country where such blockade of the whole country is being so attempted: *Provided further,* That such American Red Cross vessel shall be on a mission of mercy only and carrying only Red Cross materials and personnel.

(b)[5] The provisions of sections 2(a)[2] and 3[3] shall not prohibit a vessel, in ballast, unarmed, and not under convoy, and transporting refugee children, under sixteen years of age, from war zones, or combat areas, and shall not prohibit such vessel entering into such war zones or combat areas for this purpose, together with such necessary American citizen adult personnel in charge as may be approved by the Secretary of State, subject to the provisions of the immigration laws, if such vessel is proceeding under safe conduct granted by all of the states named in the proclamations issued under the authority of section 1(a), and if such vessel has painted on a large scale prominently, distinctly, and unmistakably on each side thereof and upon the superstructure thereof plainly visible from the air and American flag and a statement to the effect that such vessel is a refugee-child rescue ship of the United States or under United States registry: *Provided,* That every such child so brought into the United States shall, previous to departure from the port of embarkation, have been so sponsored by some responsible American person, natural or corporate, that he will not become a public charge.

TRAVEL ON VESSELS OF BELLIGERENT STATES

Sec. 5.[6] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a) it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

(b) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

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[3] Sec. 3, which related to combat areas, was repealed by Public Law 77-294 (55 Stat. 764).

[4] 22 U.S.C. 444. The first paragraph of sec. 4 was amended and restated by Public Resolution 76-87 (54 Stat. 611).

[5] Subsec. (b) was added by Public Law 76-776 (54 Stat. 866).

[6] 22 U.S.C. 445.

Sec. 6.[7] * * * [Repealed—1941]

FINANCIAL TRANSACTIONS

Sec. 7.[8] (a) Whenever the President shall have issued a proclamation under the authority of section 441(a) of this title, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any state for any person within the United States to purchase, sell, or exchange named in such proclamation, or of any political subdivision of any such state, or of any person acting for or on behalf of the government of any such state, or political subdivision thereof, issued after the date of such proclamation, or to make any loan or extend any credit (other than necessary credits accruing in connection with the transmission of telegraph, cable, wireless and telephone services) to any such government, political subdivision, or person. The provisions of this subsection shall also apply to the sale by any person within the United States to any person in a state named in any such proclamation of any articles or materials listed in a proclamation referred to in or issued under the authority of section 12(i).[9]

(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of such proclamation.

(c) Whoever shall knowingly violate any of the provisions of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty herein prescribed.

(d) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

(e) [10] This section shall not be operative when the United States is at war.

SOLICITATION AND COLLECTION OF FUNDS AND CONTRIBUTIONS

Sec. 8.[11] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a), it shall thereafter be unlawful for any person within the United States to solicit or receive any contribution for or on behalf of the government of any state named in such proclamation or for or on behalf of any agent or instrumentality of any such state.

(b) Nothing in this section shall be construed to prohibit the solicitation or collection of funds and contributions to be used for

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[7] Sec. 6, which prohibited the arming of American merchant vessels, was repealed by Public Law 77-294 (55 Stat. 764).

[8] 22 U.S.C. 447.

[9] Sec. 12(i) was repealed. See footnote 17.

[10] Subsec. (e) was added by Public Law 77-459 (56 Stat. 95).

[11] 22 U.S.C. 448.

medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds and contributions is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, but all such solicitations and collections of funds and contributions shall be in accordance with and subject to such rules and regulations as may be prescribed.

(c) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

AMERICAN REPUBLICS

Sec. 9.[12] This joint resolution (except section 12) shall not apply to any American republic engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

RESTRICTIONS ON USE OF AMERICAN PORTS

Sec. 10.[13] (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches or information to any warship, tender, or supply ship of a state named in the proclamation issued under the authority of section 1(a), but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U.S.C., 1934 edition, title 18, sec. 31),[14] and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power, and it shall be his duty, to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo to any warship, tender or supply ship of a state named in a proclamation issued under the authority of section 1(a).

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information, or any part of its cargo to a warship,

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[12] 22 U.S.C. 449.
[13] 22 U.S.C. 550.
[14] 18 U.S.C. 31 was repealed by the Act of June 25, 1948 (63 Stat. 862).

tender, or supply ship of a state named in a proclamation issued under the authority of section 1(a), he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have issued a proclamation under section 1(a) he may, while such proclamation is in effect, require the owner, master, or person in command of any vessel, foreign or domestic, before departing from the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued pursuant to section 33 of the Immigration Act of February 5, 1917 (U.S.C., title 8, sec. 168).[15] Notwithstanding the provisions of said section 33, the President may issue such regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master, or person in command.

SUBMARINES AND ARMED MERCHANT VESSELS

Sec. 11.[16] Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation.

Sec. 12.[17] * * * [Repealed—1954]

REGULATIONS

Sec. 13.[18] The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct.

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[15] 8 U.S.C. 168 was repealed by the Act of June 27, 1952 (66 Stat. 279).

[16] 22 U.S.C. 451.

[17] Sec. 12, which established the National Munitions Control Board, was repealed by sec. 542(a)(12) of Public Law 83-665 (Mutual Security Act of 1954; 68 Stat. 861).

[18] 22 U.S.C. 453.

UNLAWFUL USE OF THE AMERICAN FLAG

Sec. 14.[19] (a) It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the United States thereon, or to make use of any distinctive signs or marking, indicating that the same is an American vessel.

(b) Any vessel violating the provisions of subsection (a) of this section shall be denied for a period of three months the right to enter the ports or territorial waters of the United States except in cases of force majeure.

GENERAL PENALTY PROVISION

Sec. 15.[20] In every case of the violation of any of the provisions of this joint resolution or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than $10,000, or imprisoned not more than two years, or both.

DEFINITIONS

Sec. 16.[21] For the purposes of this joint resolution—

(a) The term "United States", when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States,[22] the Canal Zone, and the District of Columbia.

(b) The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

(c) The term "vessel" means every description of watercraft and aircraft capable of being used as a means of transportation on, under, or over water.

(d) The term "American vessel" means any vessel documented, and any aircraft registered or licensed, under the laws of the United States.

(e) The term "state" shall include nation, government, and country.

(f) The term "citizen" shall include any individual owing allegiance to the United States, a partnership, company, or association composed in whole or in part of citizens of the United States, and any corporation organized and existing under the laws of the United States as defined in subsection (a) of this section.

SEPARABILITY OF PROVISIONS

Sec. 17. If any of the provisions of this joint resolution, or the application thereof to any person or circumstance, is held invalid, the remainder of the joint resolution, and the application of such provision to other persons or circumstances, shall not be affected thereby.

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[19] 22 U.S.C. 454.
[20] 22 U.S.C. 454.
[21] 22 U.S.C. 456.
[22] Pursuant to the authority of Presidential Proclamation 2695, July 4, 1946 (11 F.R. 7517, 60 Stat. 1352), the words "(including the Philippine Islands)" were struck out at this point.

APPROPRIATIONS

Sec. 18.[23] There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this joint resolution.

REPEALS

Sec. 19. The joint resolution of August 31, 1935, as amended, and the joint resolution of January 8, 1937, are hereby repealed; but offenses committed and penalties, forfeitures, or liabilities incurred under either of such joint resolutions prior to the date of enactment of this joint resolution may be prosecuted and punished, and suits and proceedings for violations of either of such joint resolutions or of any rule or regulation issued pursuant thereto may be commenced and prosecuted, in the same manner and with the same effect as if such joint resolutions had not been repealed.

SHORT TITLE

Sec. 20. This joint resolution may be cited as the "Neutrality Act of 1939".

[23] 22 U.S.C. 457.

b. Enlistment in Foreign Service

Title 18, United States Code.[1] * * *

§ 959. Enlistment in foreign service

(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

(b) This section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this subsection shall be under regulations prescribed by the Secretary of the Army.

(c) This section and sections 960 and 961 of this title shall not apply to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

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[1] Sec. 959 was enacted as part of Public Law 80-772 (62 Stat. 745).

c. Expedition Against Friendly Nation—Arming Vessel Against Friendly Nation

Title 18, United States Code.[1] * * *

§ 960. Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

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§ 962. Arming vessel against friendly nation

Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or

Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed—

Shall be fined not more than $10,000 or imprisoned not more than three years, or both.

Every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of the informer and the other half to the use of the United States.

[1] Secs. 960 and 962 were enacted as part of Public Law 80-772 (62 Stat. 745).

d. Strengthening Armed Vessel of Foreign Nation

Title 18, United States Code.[1] * * *

§ 961. Strengthening armed vessel of foreign nation

Whoever, within the United States, increases or augments the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States is at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

[1] Sec. 961 was enacted as part of Public Law 80–772 (62 Stat. 745).

9. National Security Emergency Preparedness Responsibilities

Executive Order 12656, November 18, 1988, 54 F.R. 47491

Whereas our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

Whereas effective national preparedness planning to meet such emergency, including a massive nuclear attack, is essential to our national survival; and

Whereas effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

Whereas the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

Now, therefore, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

PART 1—PREAMBLE

Sec. 101. National Security Emergency Preparedness Policy.

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy. All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for per-

forming these functions; and development of the capability to execute those plans.

Sec. 102. Purpose.

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

Sec. 103. Scope.

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedures, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12427.

Sec. 104. Management of National Security Emergency Preparedness.

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy.

(b) The National Security Council shall arrange for Executive branch liaison with, and assistance to, the Congress and Federal judiciary on national security emergency preparedness matters.

(c) The Director of the Federal Emergency Management Agency shall serve as an advisor to the National Security Council on issues of national security emergency preparedness, including mobilization preparedness civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council process as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of and management of the National Security Council process as the President may establish, the Director of the Federal Emergency Management Agency also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council on implementation of national security emergency preparedness policy.

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedures will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

Sec. 105. Interagency Coordination.

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a national security emergency and shall develop and maintain decentralized capabilities wherever feasible and appropriate.

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in, Executive Order No. 12472, to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

Part 2—General Provisions

Sec. 201. General. The head of each Federal department and agency, as appropriate, shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope, and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies;

(b) Identification of actions that could be take in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or

reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and notices of other actions to the Archivist of the United States, for publication in the Federal Register, or to each agency designated maintain the Federal Register in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Director of the Federal Emergency Management Agency to ensure that those activities and plans are consistent with current National Security Council guidelines and policies.

Sec. 202. Continuity of Government. The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

Sec. 203. Resource Management. The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such as energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) Identify occupations and skills for which there may be a critical need in the event of a national security emergency.

Sec. 204. Protection of Essential Resources and Facilities. The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

Sec. 205. Federal Benefit, Insurance, and Loan Programs. The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall coordinate with the Secretary of the Treasury in developing plans for continuation or restoration, to the extent feasible, of such programs in national security emergencies.

Sec. 206. Research. The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council of scientific and technological developments that should be considered in national security emergency preparedness planning.

Sec. 207. Redelegation. The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, officers, or employees within that department or agency.

Sec. 208. Transfer of Functions. Recommendations for interagency transfer of any emergency preparedness function assigned under this Order or for assignment of any new emergency preparedness

function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council.

Sec. 209. Retention of Existing Authority. Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or department thereof made by law.

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PART 4—DEPARTMENT OF COMMERCE

Sec. 401. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Commerce shall:

(1) Develop control systems for priorities, allocation, production, and distribution of materials and other resources that will be available to support both national defense and essential civilian programs in a national security emergency;

(2) In cooperation with the Secretary of Defense and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(3) In cooperation with the Secretary of Defense and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(4) In cooperation with the Secretary of Defense, perform industry analyses to assess capabilities of the commercial industrial base to support the national defense, and develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs;

(5) In cooperation with the Secretary of the Treasury, develop plans for providing emergency assistance to the private sector through direct or participation loans for the financing of production facilities and equipment;

(6) In cooperation with the Secretaries of State, Defense, Transportation, and the Treasury, prepare plans to regulate and control exports and imports in national security emergencies;

(7) Provide for the collection and reporting of census information on human and economic resources, and maintain a capability to conduct emergency surveys to provide information on the status of these resources as required for national security purposes;

(8) Develop overall plans and programs to ensure that the fishing industry continues to produce and process essential protein in national security emergencies;

(9) Develop plans to provide meteorological, hydrologic, marine weather, geodetic, hydrographic, climatic, seismic, and oceanographic data and services to Federal, State, and local agencies, as appropriate;

(10) In coordination with the Secretary of State and the Director of the Federal Emergency Management Agency, represent the United States in industry-related international (NATO and allied) civil emergency preparedness planning and related activities.

Sec. 402. Support Responsibilities. The Secretary of Commerce shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical materials;

(2) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest and fishery products;

(3) Assist, in consultation with the Secretaries of State and Defense, the Secretary of the Treasury in the formulation and execution of economic measures affecting other nations.

Part 5—Department of Defense

Sec. 501. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Defense shall:

(1) Ensure military preparedness and readiness to respond to national security emergencies;

(2) In coordination with the Secretary of Commerce, develop, with industry, government, and the private sector, reliable capabilities for the rapid increase of defense production to include industrial resources required for that production;

(3) Develop and maintain, in cooperation with the heads of other departments and agencies, national security emergency plans, programs, and mechanisms to ensure effective mutual support between and among the military, civil government, and private sector;

(4) Develop and maintain damage assessment capabilities and assist the Director of the Federal Emergency Management Agency and the heads of other departments and agencies in developing and maintaining capabilities to assess attack damage and to estimate the effects of potential attack on the Nation;

(5) Arrange, through agreements with the heads of other Federal departments and agencies, for the transfer of certain Federal resources to the jurisdiction and/or operational control of the Department of Defense in national security emergencies;

(6) Acting through the Secretary of the Army, develop, with the concurrence of the heads of all affected departments and agencies, overall plans for the management, control, and allocation of all usable waters from all sources within the jurisdiction of the United States. This includes:

(a) Coordination of national security emergency water resource planning at the national, regional, State, and local levels;

(b) Development of plans to assure emergency provision of water from public works projects under the jurisdiction of the Secretary of the Army to public water supply utilities and critical defense production facilities during national security emergencies;

(c) Development of plans to assure emergency operation of waterways and harbors; and

(d) Development of plans to assure the provision of potable water;

(7) In consultation with the Secretaries of State and Energy, the Director of the Federal Emergency Management Agency, and others, as required, develop plans and capabilities for identifying, analyzing, mitigating, and responding to hazards related to nuclear weapons, materials, and devices; and maintain liaison, as appropriate, with the Secretary of Energy and the Members of the Nuclear Regulatory Commission to ensure the continuity of nuclear weapons production and the appropriate allocation of scarce resources, including the recapture of special nuclear materials from Nuclear Regulatory Commission licensees when appropriate;

(8) Coordinate with the Administrator of the National Aeronautics and Space Administration and the Secretary of Energy, as appropriate, to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies;

(9) Develop, in coordination with the Secretary of Labor, the Directors of the Selective Service System, the Office of Personnel Management, and the Federal Emergency Management Agency, plans and systems to ensure that the Nation's human resources are available to meet essential military and civilian needs in national security emergencies;

(10) Develop national security emergency operational procedures, and coordinate with the Secretary of Housing and Urban Development with respect to residential property, for the control, acquisition, leasing, assignment and priority of occupancy of real property within the jurisdiction of the Department of Defense;

(11) Review the priorities and allocations systems developed by other departments and agencies to ensure that they meet Department of Defense needs in a national security emergency; and develop and maintain the Department of Defense programs necessary for effective utilization of all priorities and allocations systems;

(12) Develop, in coordination with the Attorney General of the United States, specific procedures by which military assistance to civilian law enforcement authorities may be requested, considered, and provided;

(13) In cooperation with the Secretary of Commerce and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(14) In cooperation with the Secretary of Commerce and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(15) With the assistance of the heads of other Federal departments and agencies, provide management direction for the stockpiling of strategic and critical materials, conduct storage, maintenance, and quality assurance operations for the stockpile of strategic and critical materials, and formulate plans, programs, and reports relating to the stockpiling of strategic and critical materials.

Sec. 502. Support Responsibilities. The Secretary of Defense shall:

(1) Advise and assist the heads of other Federal departments and agencies in the development of plans and programs to support national mobilization. This includes, providing, as appropriate:

(a) Military requirements, prioritized and time-phased to the extent possible, for selected end-items and supporting services, materials and components;

(b) Recommendations for use of financial incentives and other methods to improve defense production as provided by law; and

(c) Recommendations for export and import policies;

(2) Advise and assist the Secretary of State and the heads of other Federal departments and agencies; as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate in the development of plans to restore community facilities;

(4) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(5) In consultation with the Secretaries of State and Commerce, assist the Secretary of the Treasury in the formulation and execution of economic measures that affect other nations;

(6) Support the Secretary of State and the heads of other Federal departments and agencies as appropriate in the formulation and implementation of foreign policy, and the negotiation of contingency and post-emergency plans, intergovernmental agreements, and arrangements with allies and friendly nations, which affect national security;

(7) Coordinate with the Director of the Federal Emergency Management Agency the development of plans for mutual civil-military support during national security emergencies;

(8) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills.

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Part 13—Department of State

Sec. 1301. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of State shall:

(1) Provide overall foreign policy coordination in the formulation and execution of continuity of government and other national security emergency preparedness activities that affect foreign relations;

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to:

(a) Formulation and implementation of foreign policy and negotiation regarding contingency and post-emergency plans, intergovernmental agreements, and arrangements with United States' allies;

(b) Formulation, negotiation, and execution of policy affecting the relationships of the United States with neutral states;

(c) Formulation and execution of political strategy toward hostile or enemy states;

(d) Conduct of mutual assistance activities;

(e) Provision of foreign assistance, including continuous supervision and general direction of authorized economic and military assistance programs;

(f) Protection or evacuation of United States citizens and nationals abroad and safeguarding their property abroad, in consultation with the Secretaries of Defense and Health and Human Services;

(g) Protection of international organizations and foreign diplomatic, consular, and other official personnel and property, and other assets, in the United States, in coordination with the Attorney General and the Secretary of the Treasury;

(h) Formulation of policies and provisions for assistance to displaced persons and refugees abroad;

(i) Maintenance of diplomatic and consular representation abroad; and

(j) Reporting of and advising on conditions overseas that bear upon national security emergencies.

Sec. 1302. Support Responsibilities. The Secretary of State shall:

(1) Assist appropriate agencies in developing planning assumptions concerning accessibility of foreign sources of supply;

(2) Support the Secretary of the Treasury, in consultation, as appropriate, with the Secretaries of Commerce and Defense, in the formulation and execution of economic measures with respect to other nations;

(3) Support the Secretary of Energy in the international liaison activities pertaining to nuclear materials facilities;

(4) Support the Director of the Federal Emergency Management Agency in the coordination and integration of United States policy regarding the formulation and implementation of civil emergency resources and preparedness planning;

(5) Assist the Attorney General of the United States in the formulation of national security emergency plans for the control of persons entering or leaving the United States.

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PART 25—UNITED STATES INFORMATION AGENCY

Sec. 2501. Lead Responsibilities. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the United States Information Agency shall:

(1) Plan for the implementation of information programs to promote an understanding abroad of the status of national security emergencies within the United States;

(2) In coordination with the Secretary of State's exercise of telecommunications functions affecting United States diplomatic missions and consular offices overseas, maintain the capability to provide television and simultaneous direct radio broadcasting in major languages to all areas of the world, and the capability to provide wireless file to all United States embassies during national security emergencies.

Sec. 2502. Support Responsibility. The Director of the United States Information Agency shall assist the heads of other Federal departments and agencies in planning for the use of media resources and foreign public information programs during national security emergencies.

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PART 29—GENERAL

Sec. 2901. Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

10. U.S. Government Opposition to the Practice of Torture

Public Law 98–447 [H.J. Res. 605], 98 Stat. 1721, approved October 4, 1984

JOINT RESOLUTION Regarding the implementation of the policy of the United States Government in opposition to the practice of torture by any foreign government.

Whereas international human rights organizations have investigated and reported on the use of torture in many countries throughout the world;

Whereas the Department of State in its annual country reports on human rights practices has reported that torture is all too frequent in many countries of the world;

Whereas torture knows no ideological boundaries and is practiced in countries in every region of the world;

Whereas torture is absolutely prohibited by international legal standards;

Whereas in those countries where torture is practiced systematically, it is possible to identify laws, institutions, and other forms of political organization that contribute to the practice and allow its continuation;

Whereas legal, medical, religious, and other groups seeking to combat torture emphasize that access to detainees, the civil and criminal prosecution of torturers, and the rehabilitation of victims of torture are critical steps in reducing the practice and effects of torture;

Whereas the United States Government has supported the work of the United Nations Commission on Human Rights in developing the draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which is intended to reduce the practice of torture and lead to its eventual abolition, and the United States Government is supportive of the United Nations Voluntary Fund for Victims of Torture; and

Whereas the good will of the peoples of the world toward the United States can be increased when the United States distances itself from the practice of torture by governments friendly to the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That [1] the Congress reaffirms that it is the continuing policy of the United States Government to oppose the practice of torture by foreign governments through public and private diplomacy and, when necessary and appropriate, through the enactment and vigorous implementation of laws intended to reinforce United States policies with respect to torture. The United States Government opposes acts of tor-

[1] 22 U.S.C. 2656 note.

ture wherever they occur, without regard to ideological or regional considerations, and will make every effort to work cooperatively with other governments and with nongovernmental organizations to combat the practice of torture worldwide.

Sec. 2.[1] (a) The President is requested—

(1) to instruct the Permanent Representative of the United States to the United Nations to continue to raise the issue of torture practiced by governments; and

(2) to continue to involve the United States Government in the formulation of international standards and effective implementing mechanisms, particularly the draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.

(b) In order to implement the policy expressed in the first section of this resolution, the Secretary of State is requested to issue formal instructions to each United States chief of mission regarding United States policy with respect to torture, including—

(1) instructions—

(A) to examine allegations of the practice of torture, particularly allegations concerning the existence of secret detention, extended incommunicado detention, and restriction on access by family members, lawyers, and independent medical personnel to detainees; and

(B) to forward such information as may be gathered, including information regarding any efforts made by the host government to reduce and eliminate the practice of torture, to the Assistant Secretary of State for Human Rights and Humanitarian Affairs for analysis in preparing the Department's annual country reports on human rights practices;

(2) in the case of a chief of mission assigned to a country where torture is regularly practiced, instructions to report on a periodic basis as circumstances require to the Assistant Secretary of State for Human Rights and Humanitarian Affairs regarding efforts made by the respective United States diplomatic mission to implement United States policy with respect to combating torture;

(3) instructions to meet with indigenous human rights monitoring groups knowledgeable about the practice of torture for the purpose of gathering information about such practice; and

(4) instructions to express concern in individual cases of torture brought to the attention of a United States diplomatic mission including, whenever feasible, sending United States observers to trials when there is reason to believe that torture has been used against the accused.

(c) The Secretary of Commerce should continue to enforce vigorously the current restrictions on the export of crime control equipment pursuant to the Export Administration Act of 1979.

(d) The heads of the appropriate departments of the United States Government that furnish military and law enforcement training to foreign personnel, particularly personnel from countries where the practice of torture has been a documented concern, shall include in such training, when relevant, instruction regarding

international human rights standards and the policy of the United States with respect to torture.

11. Commission on the Ukraine Famine Act

Partial text of Public Law 99-180 [The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1986, H.R. 2965], 99 Stat. 1136 at 1157, approved December 13, 1985, as amended by Public Law 100-340 [S. 2304], 102 Stat. 622, approved June 17, 1988

NOTE.—Sec. 136 of Public Law 98-473 (Continuing Appropriations Act, 1985; 98 Stat. 1973) appropriated $400,000 to carry out the provisions of S. 2456, a bill to establish a commission to study the 1932-1933 Ukraine famine. S. 2456 passed the Senate on Sept. 21, 1984 but was not enacted. Subsequently, Title V of Public Law 99-180 (Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1986), modified the Commission as established by S. 2456 and appropriated funds as set forth below.

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TITLE V—RELATED AGENCIES

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COMMISSION ON THE UKRAINE FAMINE

For necessary expenses of the Commission on the Ukraine Famine to carry out the provisions of S. 2456 (98th Congress) as passed the Senate on September 21, 1984, $400,000, to remain available until expended, and the Commission on the Ukraine Famine as contained in S. 2456, is hereby established, with modifications as follows:

ESTABLISHMENT

SECTION 1. There is established a commission to be known as the "Commission on the Ukraine Famine" (in this Act referred to as the "Commission").

PURPOSE OF THE COMMISSION

SEC. 2. The purpose of the Commission is to conduct a study of the 1932-1933 Ukraine famine in order to—

(1) expand the world's knowledge of the famine; and

(2) provide the American public with a better understanding of the Soviet system by revealing the Soviet role in the Ukraine famine.

DUTIES OF THE COMMISSION

SEC. 3. The duties of the Commission are to—

(1) conduct a study of the 1932–1933 Ukraine famine (in this Act referred to as the "famine study"), in accordance with section 6 of this Act, in which the Commission shall—

(a) gather all available information about the 1932–1933 famine in Ukraine;

(B) analyze the causes of such famine and the effects it has had on the Ukrainian nation and other countries; and

(C) study and analyze the reaction by the free countries of the world to such famine; and

(2) submit to Congress for publication a final report on the results of the famine study no later than June 22, 1990 [1] of this Act.

MEMBERSHIP

SEC. 4. (a) The Commission shall be composed of fifteen members, who shall be appointed within thirty days after the date of enactment of this Act, as follows:

(1) Four members shall be Members of the House of Representatives and shall be appointed by the Speaker of the House of Representatives. Two such members shall be selected from the majority party of the House of Representatives and two such members shall be selected, after consultation with the minority leader of the House, from the minority party of the House of Representatives. The Speaker also shall designate one of the House Members as Chairman of the Commission.

(2) Two members shall be Members of the Senate and shall be appointed by the President pro tempore of the Senate. One such member shall be selected from the majority party of the Senate and one such member shall be selected, after consultation with the minority leader of the Senate, from the minority party of the Senate.

(3) One member shall be from among officers and employees of each of the Departments of State, Education, and Health and Human Services and shall be appointed by the President, after consultation with the Secretaries of the respective departments.

(4) Six members shall be from the Ukrainian-American community at large and Ukrainian-American chartered human rights groups and shall be appointed by the Chairman of the Commission in consultation with congressional members of the Commission, the Ukrainian-American community at large, and executive boards of Ukrainian-American chartered human rights groups.

(b) The term of office of each member shall be for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.[2]

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[1] Sec. (1) of Public Law 100–340 (102 Stat. 622) struck out the text "two years after the organizational meeting of the Commission held under section 6(a)" and inserted "June 22, 1990." The words "of this Act" which follow this point should probably have been struck out as well.

[2] This last sentence was added by sec. (2) of Public Law 100–340 (102 Stat. 622).

(c) Each member of the Commission who is not otherwise employed by the United States Government shall be paid from the sum appropriated to carry out this Act, the daily equivalent of the rate of basic pay payable for GS–18 of the General Schedule for each day, including travel time, during which he or she is attending meetings or hearings of the Commission or otherwise performing Commission related duties as requested by the Chairman of the Commission. A member of the Commission who is an officer or employee of the United States Government or a Member of Congress shall serve without additional compensation. Each member of the Commission shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

ADMINISTRATIVE PROVISIONS

SEC. 5. (a) Not later than thirty days after all members have been appointed to the Commission, the Commission shall hold an organizational meeting to establish the rules and procedures under which it will carry out its responsibilities.

(b) The Commission shall hire experts and consultants in accordance with section 3109 of title 5, United States Code, from the academic community to assist in carrying out the famine study. Such experts and consultants shall be chosen by a majority vote of the Commission members on the basis of their academic background and their experience relevant to research on the Ukraine famine. No person shall be otherwise employed by the Federal Government while serving as an expert or consultant to the Commission.

(c) The Commission shall have a staff director, who shall be appointed by the Chairman.

POWERS OF THE COMMISSION

SEC. 6. (a) The Commission or any member it authorizes may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, request such attendance, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission or any such member may administer oaths or affirmations to witnesses appearing before it.

(b)(1) The Commission may issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(2) The subpenas of the Commission may be issued by the Chairman of the Commission or any member designated by him and may be served by any person designated by the Chairman or such member. The subpenas of the Commission shall be served in the same manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(3) If a person issued a subpena under paragraph (1) refuses to obey such subpena, any court of the United States within the judi-

cial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished as a contempt of the court.

(4) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(c) The Commission may obtain from any department or agency of the United States information that it considers useful in the discharge of its duties. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission to the extent permitted by law.

(d) The Commission may appoint and fix the pay of such personnel as it considers appropriate. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter 53 of such title, relating to classification and General Schedule pay rates. No individual so appointed may receive pay in excess of the maximum annual rate of pay payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(e) The Commission may solicit, accept, use, and dispose of donations of money, property, or services.

(f) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(g) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) The Commission may procure by contract any supplies, services, and property, including the conduct of research and the preparation of reports by Government agencies and private firms, necessary to discharge the duties of the Commission, in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts.

TERMINATION

SEC. 7. The Commission shall terminate sixty days after the report of the Commission is submitted to Congress under section 4(4) of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There is authorized to be appropriated the sum of $400,000, to remain available until expended, to carry out this Act.

12. Assignment of National Security and Emergency Preparedness Telecommunications Functions.

Executive Order 12472, April 3, 1984, 49 F.R. 13471

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.), and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.), and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

Section 1. The National Communications System. (a) There is hereby established the National Communications System (NCS). The NBS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) The exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and

(2) The coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;

(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;

(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and

(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and

(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Defense is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;

(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

(3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency;

(4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:

a. The assignment of implementation or other responsibilities to NCS member entities;

b. New initiatives to assist in the exercise of the functions specified in Section 2; and

c. Changes in the composition or structure of the NCS.

(5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;

(6) Provide staff support and technical assistance to the National Security Telecommunications Advisory Committee established by Executive Order No. 12382, as amended; and

(7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(f) The NCS Committee of Principals shall:

(1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications pro-

grams or activities of the NCS and the entities represented on the Committee;

(2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;

(3) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and

(4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

(1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;

b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;

c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;

d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and

e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Director of the Office of Management and Budget.

(2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;

(3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;

(4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency preparedness telecommunications requirements of the Federal government;

(5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;

(6) Pursuant to the Federal Standardization Program of the General Services Administration, and in consultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and

(7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

Sec. 2. Executive Office Responsibilities. (a) *Wartime Emergency Functions.* (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606 (a), (c)-(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-Wartime Emergency Functions.* (1) The National Security Council shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power function is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President's so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) *Planning and Oversight Responsibilities.* (1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evaluation of the capability of existing and planned communication systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such test or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) *Consultation with Federal Departments and Agencies.* In performing the functions assigned under this Order, the National Security Council and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Director of the Federal Emergency Management Agency with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Ex-

ecutive Order No. 12333; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal Government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) *Budgetary Guidelines.* The Director of the Office of Management and Budget, in consultation with the National Security Council and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.

Sec. 3. Assignment of Responsibilities to Other Departments and Agencies. In order to support and enhance the capability to satisfy the national security and emergency preparedness telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances including those of crisis or emergency, the Federal departments and agencies shall perform the following functions:

(a) *Department of Commerce.* The Secretary of Commerce shall, for all conditions of crisis or emergency:

(1) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(2) Develop, maintain and publish policy, plans, and procedures for the control and allocation of frequency assignments, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal government.

(b) *Federal Emergency Management Agency.* The Director of the Federal Emergency Management Agency shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities;

(2) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their national security or emergency preparedness telecommunications requirements;

(3) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive and consistent with the planning of the Federal government; and

(4) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by the agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(c) *Department of State.* The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications System, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security or emergency preparedness responsibilities.

(d) *Department of Defense.* In addition to the other responsibilities assigned by this Order, the Secretary of Defense shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute the responsibilities assigned by Executive Order No. 12333; and

(2) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(e) *Department of Justice.* The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to responsibilities assigned by this Order.

(f) *Central Intelligence Agency.* The Director of Central Intelligence shall plan for and provide, operate, and maintain telecommunications services adequate to support its assigned responsibilities, including the dissemination of intelligence within the Federal Government.

(g) *General Services Administration.* Except as otherwise assigned by this Order, the Administrator of General Services, consistent with policy guidance provided by the Director of the Office of Management and Budget, shall ensure that Federally owned or managed domestic communications facilities and services meet the national security and emergency preparedness requirements of the Federal civilian departments, agencies and entities.

(h) *Federal Communications Commission.* The Federal Communications Commission shall, consistent with Section 4(c) of this Order:

(1) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security or emergency preparedness communications services, in order to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity;

(2) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions;

(3) Develop policy, plans and procedures adequate to execute the responsibilities assigned in this Order under all conditions or crisis or emergency; and

(4) Consult as appropriate with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of their respective national security and emergency preparedness activities.

(i) All Federal departments and agencies, to the extent consistent with law (including those authorities and responsibilities set forth in Section 4(c) of this Order), shall:

(1) Determine their national security and emergency preparedness telecommunications requirements, and provide information regarding such requirements to the Manager of the NCS;

(2) Prepare policies, plans and procedures concerning telecommunications facilities, services or equipment under their management or operational control to maximize their capability of responding to the national security or emergency preparedness needs of the Federal Government;

(3) Provide, after consultation with the Director of the Office of Management and Budget, resources to support their respective requirements for national security and emergency preparedness telecommunications; and provide personnel and staff support to the Manager of the NCS as required by the President;

(4) Make information available to, and consult with, the Manager of the NCS regarding agency telecommunications activities in support of national security or emergency preparedness;

(5) Consult, consistent with the provisions of Executive Order No. 12046, as amended, and in conjunction with the Manager of the NCS, with the Federal Communications Commission regarding execution of responsibilities assigned by this Order;

(6) Submit reports annually, or as otherwise requested, to the Manager of the NCS, regarding agency national security or emergency preparedness telecommunications activities; and

(7) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this Order, furnish-

ing them such information, support and assistance as may be required.

(j) Each Federal department or agency shall execute the responsibilities assigned by this Order in conjunction with the emergency management activities of the Federal Emergency Management Agency, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of NCS and individual agency telecommunications activities.

Sec. 4. General Provisions. (a) All Executive departments and agencies may issue such rules and regulations as may be necessary to carry out the functions assigned under this Order.

(b) In order to reflect the assignments of responsibility provided by this Order:

(1) Sections 2-414, 4-102, 4-103, 4-202, 4-302, 5-3, and 6-101 of Executive Order No. 12046, as amended, are revoked;

(2) The Presidential Memorandum of August 21, 1963, as amended, entitled "Establishment of the National Communications System", is hereby superseded; and

(3) Section 2-411 of Executive Order No. 12046, as amended, is further amended by deleting the period and inserting ", except as otherwise provided by Executive Order No. " and inserting the number assigned to this Order.

(c) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended; or under and other law; or any function vested by law in the Federal Communications Commission.

Sec. 5. This Order shall be effective upon publication in the Federal Register.

13. Inspector General Act of 1978

Public Law 95-452 [H.R. 8588], 99 Stat. 1101, approved October 12, 1978, as amended

Title 5 App. United States Code

§ 1. Short title

That this Act be cited as the "Inspector General Act of 1978".[1]

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the establishments listed in section 11(2);

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is hereby established in each of such establishments an office of Inspector General.

§ 3. Appointment of Inspector General: supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any

[1] 5 U.S.C. App.

audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

§ 4. Duties and responsibilities; report of criminal violations to Attorney General

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administra-

tion of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 11(2), Offices of Inspector General of designated Federal entities defined under section 8E(a)(2), and any audit office established within a Federal entity defined under section 8E(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office or the Office of Inspector General of each establishment defined under section 11(2), or the Office of Inspector General of each designated Federal entity defined under section 8E(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

§ 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prospective authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

(6) a listing, subdivided according to subject matter, of each audit report issued by the Office during the reporting period and for each audit report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports and the total dollar value of questioned costs (including a separate category for the dollar value of supported costs), for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management, for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period; and

(12) information concerning any significant management decision with which the Inspector General is in disagreement.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing—

(1) any comments such head determines appropriate;

(2) statistical tables showing the total number of audit reports and the dollar value of disallowed costs, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and

(ii) the dollar value of disallowed costs that were written off by management; and

(D) for which no final action has been taken by the end of the reporting period;

(3) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of recommendations that were actually completed; and

(ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

(D) for which no final action has been taken by the end of the reporting period; and

(4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing—

(A) a list of such audit reports and the date each such report was issued;

(B) the dollar value of disallowed costs for each report;

(C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and

(D) an explanation of the reasons final action has not been taken with respect to each such audit report, except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon

which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense of national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986, nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) as used in this section—

(1) the term "questioned costs" means a costs that is questioned by the Office because of—

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means—

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.

§ 6. Authority of Inspector General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and

other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided,* That procedures other than subpena shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of Title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d) For purposes of the provisions of title 5, United States Code, governing the Senior Executive Service, any reference in such provisions to the "appointing authority" for a member of the Senior Executive Service or for a Senior Executive Service position shall, if such member or position is or would be within the Office of an Inspector General, be deemed to be a reference to such Inspector General.

§ 7. Complaints by employees; disclosure of identity; reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

§ 8. Additional provisions with respect to the Inspector General of the Department of Defense

(a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal advisor to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense,

except that, when the Coast Guard operates as a service of another department or agency of the Federal Government, a member of the Coast Guard shall be deemed to be an employee of such department or agency.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified in such section, to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives.

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

§ 8A. Special provisions relating to the Agency for International Development

(a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development—

(1) shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency; and

(2) to the extent requested by the Director of the United States International Development Cooperation Agency (after consultation with the Administrator of the Agency for International Development), shall supervise, direct, and control all audit, investigative, and security activities relating to programs and operations within the United States International Development Cooperation Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) The semiannual reports required to be submitted to the Administrator of the Agency for International Development pursuant to section 5(b) of this Act shall also be submitted to the Director of the United States International Development Cooperation Agency.

(d) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(e) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the Monitoring Overseas Direct Employment policy.

(f) The reference in section 7(a) of this Act to an employee of the establishment shall, with respect to the Inspector General of the Agency for International Development, be construed to include an employee of or under the United States International Development Cooperation Agency.

(g) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2384(a)].

(h) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2151 et seq.].

§ 8B. Special provisions concerning the Nuclear Regulatory Commission

(a) The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, but shall not delegate such authority to any other officer or employee of the Commission.

(b) Notwithstanding sections 6(a)(7) and (8), the Inspector General of the Nuclear Regulatory Commission is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments and employment, and the obtaining of such services, within the Nuclear Regulatory Commission.

§ 8C. Special provisions concerning the Department of the Treasury

(a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

(E) intelligence or counterintelligence matters; or

(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note; Public Law 94–524).

(2) With respect to the information described under paragraph (1), the Secretary of the Treasury may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent significant impairment to the national interests of the United States.

(3) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service, and the internal audits and internal investigations performed by the Office of Assistant Commissioner (Inspection) of the Internal Revenue Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.

(c) Notwithstanding subsection (b), the Inspector General may initiate, conduct and supervise such audits and investigations in the Department of the Treasury (including the bureaus and services referred to in subsection (b)) as the Inspector General considers appropriate.

(d) If the Inspector General initiates an audit or investigation under subsection (c) concerning a bureau or service referred to in subsection (b), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (b) with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues a notice under the preceding sentence, no other audit or investigation shall be initiated into the matter under audit or investigation by the In-

spector General and any other audit or investigation of such matter shall cease.

(e)(1) The Inspector General shall have access to returns and return information, as defined in section 6103(b) of the Internal Revenue Code of 1986, only in accordance with the provisions of section 6103 of such Code and this Act.

(2) Access by the Inspector General to returns and return information under section 6103(h)(1) of such Code shall be subject to the following additional requirements:

(A) In order to maintain internal controls over access to returns and return information, the Inspector General, or in the absence of the Inspector General, the Acting Inspector General, the Deputy Inspector General, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations, shall provide to the Assistant Commissioner (Inspection) of the Internal Revenue Service written notice of the Inspector General's intent to access returns and return information. If the Inspector General determines that the Inspection Service of the Internal Revenue Service should not be made aware of a notice of access to returns and return information, such notice shall be provided to the Senior Deputy Commissioner of Internal Revenue.

(B) Such notice shall clearly indicate the specific returns or return information being accessed, contain a certification by the Inspector General, or in the absence of the Inspector General, the Acting Inspector General, the Deputy Inspector General, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations, that the returns or return information being accessed are needed for a purpose described under section 6103(h)(1) of the Internal Revenue Code of 1986, and identify those employees of the Office of Inspector General of the Department of the Treasury who may receive such returns or return information.

(C) The Internal Revenue Service shall maintain the same system of standardized records or accountings of all requests from the Inspector General for inspection or disclosure of returns and return information (including the reasons for and dates of such requests), and of returns and return information inspected or disclosed pursuant to such requests, as described under section 6103(p)(3)(A) of the Internal Revenue Code of 1986. Such system of standardized records or accountings shall also be available for examination in the same manner as provided under section 6103(p)(3) of the Internal Revenue Code of 1986.

(D) The Inspector General shall be subject to the same safeguards and conditions for receiving returns and return information as are described under section 6103(p)(4) of the Internal Revenue Code of 1986.

(f) An audit or investigation conducted by the Inspector General shall not affect a final decision of the Secretary of the Treasury or his delegate under section 6406 of the Internal Revenue Code of 1986.

(g) Notwithstanding section 4(d), in matters involving chapter 75 of the Internal Revenue Code of 1986, the Inspector General shall

report expeditiously to the Attorney General only offenses under section 7214 of such Code, unless the Inspector General obtains the consent of the Commissioner of Internal Revenue to exercise additional reporting authority with respect to such chapter.

(h) Any report required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives.

§ 8D. Special provisions concerning the Department of Justice

(a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Attorney General with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information regarding—

(A) ongoing civil or criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) intelligence or counterintelligence matters; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Attorney General determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent the significant impairment to the national interests of the United States.

(3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Justice—

(1) may initiate, conduct and supervise such audits and investigations in the Department of Justice as the Inspector General consider appropriate;

(2) shall give particular regard to the activities of the Counsel, Office of Professional Responsibility of the Department and the audit, internal investigative, and inspection units outside the Office of Inspector General with a view toward avoiding duplication and insuring effective coordination and cooperation; and

(3) shall refer to the Counsel, Office of Professional Responsibility of the Department for investigation, information or allegations relating to the conduct of any officer or employee of the Department of Justice employed in an attorney, criminal investigative, or law enforcement position that is or may be a violation of law, regulation, or order of the Department or any other applicable standard of conduct, except that no such referral shall be made if the officer of employee is employed in the Office of Professional Responsibility of the Department.

(c) Any report required to be transmitted by the Attorney General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on the Judiciary and Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives.

§ 8E. Requirements for Federal entities and designated Federal entities

(a) Notwithstanding section 11 of this Act, as used in this section—

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 11(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United State Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means ACTION, Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Home Loan Bank Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment

for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

(3) the term "head of the Federal entity" means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term "head of the designated Federal entity" means any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that with respect to the National Science Foundation, such term means the National Science Board;

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.

(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

(e) If an Inspector General is removed from office or is transferred to another position or location within an designated Federal entity, the head of the designated Federal entity shall promptly communicate in writing the reasons for any such removal or transfer to both Houses of the Congress.

(f)(1) The Chief Postal Inspector of the United States Postal Service shall also hold the position of Inspector General of the United States Postal Service, and for purposes of this section, shall report to, and be under the general supervision of, the Postmaster Gener-

al of the United States Postal Service. The Postmaster General, in consultation with the Governors of the United States Postal Service, shall appoint the Chief Postal Inspector. The Postmaster General, with the concurrence of the Governors of the United States Postal Service, shall have power to remove the Chief Postal Inspector or transfer the Chief Postal Inspector to another position or location within the United States Postal Service. If the Chief Postal Inspector is removed or transferred in accordance with this subsection, the Postmaster General shall promptly notify both Houses of the Congress in writing of the reasons for such removal or transfer.

(2) For purposes of paragraph (1), the term "Governors" has the same meaning as such term is defined under section 102(3) of title 39, United States Code.

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) "designated Federal entity"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and

operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

§ 8F. Rule of construction of special provisions

The special provisions under section 8, 8A, 8B, 8C, or 8D of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8E(a).

§ 9. Transfer of functions

(a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General, Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act [20 U.S.C.A. § 3441];

(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94–505);

(G) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(H) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(I) of the Department of Justice, the offices of that Department referred to as (i) the "Audit Staff, Justice Management Division", (ii) the "Policy and Procedures Branch, Office of the Comptroller, Immigration and Naturalization Service", the "Office of Professional Responsibility, Immigration and Naturalization Service", and the "Office of Program Inspections, Immigration and Naturalization Service", (iii) the "Office of Internal Inspection, United States Marshals Service", (iv) the "Financial Audit Section, Office of Financial Management, Bureau of Prisons", and the "Office of Inspections, Bureau of Prisons", and (v) from the Drug Enforcement Administration, that portion of the "Office of Inspections" which is engaged in internal audit activities, and that portion of the "Office of Planning and Evaluation" which is engaged in program review activities;

(J) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

(K) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(L) of the Department of the Treasury, the office of that Department referred to as the "Office of Inspector General", and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the "Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms", the "Office of Internal Affairs, United States Customs Service", and the "Office of Inspections, United States Secret Service" which is engaged in internal audit activities;

(M) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(N) of the Federal Emergency Management Agency, the office of that agency referred to as the "Office of Inspector General";

(O) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(P) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Manage-

ment Audit Office" and the "Office of Inspections and Security";

(Q) of the Nuclear Regulatory Commission, the office of that Commission referred to as the "Office of Inspector and Auditor";

(R) of the Office of Personnel Management, the offices of that agency referred to as the "Office of Inspector General", the "Insurance Audits Division, Retirement and Insurance Group", and the "Analysis and Evaluation Division, Administration Group";

(S) of the Railroad Retirement Board, the office of the Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);

(T) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

(U) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act, except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act [Oct. 1, 1978], held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

§ 10. Conforming and technical amendments * * *[3]

§ 11. Definitions

As used in this Act—

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[3] Section 10 amended sections 5315 and 5316 of Title 5, Government Organization and Employees, and section 3522 of Title 42, The Public Health and Welfare.

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; the Agency for International Development, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Small Business Administration, the United States Information Agency, or the Veterans' Administration; as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of Title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

§ 12. Effective date

The provisions of this Act and the amendments made by this Act [see section 10 of this Act] shall take effect October 1, 1978.

14. Resolution Establishing a Select Committee on Intelligence

Partial text of S. Res. 400, 94th Congress

A RESOLUTION ESTABLISHING A SELECT COMMITTEE ON INTELLIGENCE

Resolved, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the "select committee"). The select committee shall be composed of fifteen members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations; and

(D) two members from the Committee on the Judiciary; and

(E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause (E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

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SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such reports, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

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15. Permanent Select Committee on Intelligence

Partial text of House Rule XLVIII

RULE XLVIII

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

1. (a) There is hereby established a permanent select committee to be known as the Permanent Select Committee on Intelligence (hereinafter in this rule referred to as the "select committee"). The select committee shall be composed of not more than sixteen Members with representation to include at least one Member from:

(1) the Committee on Appropriations;
(2) the Committee on Armed Services;
(3) the Committee on Foreign Affairs; and
(4) the Committee on the Judiciary;

3. (a) The select committee, for the purposes of accountability to the House, shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the House or to any other appropriate committee or committees of the House any matters requiring the attention of the House or such other committee or committees. In making such reports, the select committee shall proceed in a manner consistent with clause 7 to protect national security.

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16. National Security Council

Partial Text of Public Law 80-253 [S. 758], 61 Stat. 495, approved July 26, 1947, as amended by Public Law 81-216, 63 Stat. 578, approved August 10, 1949; by Public Law 82-165, 65 Stat. 373, approved October 10, 1951; by Public Law 99-433, [H.R. 3622], 100 Stat. 992, approved October 1, 1986; and by Public Law 100-690 [H.R. 5210], 102 Stat. 4181 at 4182, approved November 18, 1988

AN ACT To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SHORT TITLE

That this Act may be cited as the "National Security Act of 1947".

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

Sec. 101.[1] (a) ESTABLISHMENT; PRESIDING OFFICER; FUNCTIONS; COMPOSITION

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided,* That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

(1) the President;
(2) the Vice-President; [2]
(3) the Secretary of State;
(4) the Secretary of Defense;
(5) the Director for Mutual Security; [3]

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[1] 50 U.S.C. 402.

[2] The Vice President was made a member of the Council by the National Security Act Amendments of 1949 (Public Law 81-216; 63 Stat. 578).

[3] The Director for Mutual Security was made a member under the Mutual Security Act of 1951 (Public Law 82-165; 65 Stat. 373). The Chairman of the National Security Resources Board

Continued

(6) the Chairman of the National Security Resources Board; [3] and

(7) the Secretaries and Under Secretaries of other executive departments and of the military departments,[4] the Chairman of the Munitions Board and the Chairman of the Research and Development Board,[5] when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) ADDITIONAL FUNCTIONS.

In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) EXECUTIVE SECRETARY; APPOINTMENT AND COMPENSATION: STAFF EMPLOYEES

The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and Chapter 51 and subchapter III of chapter 53 of Title 5, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) RECOMMENDATIONS AND REPORTS

The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e) [6] The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

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was a member under the original Act. Both positions and their function with respect to being a member of the National Security Council were abolished in 1953.

[4] The Secretaries of the Army, Navy and Air Force were members under the 1947 Act. Their memberships were abolished by the National Security Act Amendments of 1949 (Public Law 81-216; 63 Stat. 578).

[5] The Munitions Board and the Research and Development Board, together with their respective offices of the Chairman, were abolished by sec. 2 of Reorganization Plan No. 6 of 1953 (5 U.S.C. App; 67 Stat. 638). All functions of each board were transferred to the Secretary of Defense.

[6] Subsec. (e) was added by sec. 203 of the DOD Reorganization Act of 1986 (Public Law 99-433; 100 Stat. 1011).

(f) [7] The Director of National Drug Control Policy may, in his role as principal adviser to the National Security Council on national drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.

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ANNUAL NATIONAL SECURITY STRATEGY REPORT

Sec. 104.[8] (a)(1) The President shall transmit to Congress each year a comprehensive report on the national security strategy of the United States (hereinafter in this section referred to as a "national security strategy report").

(2) The national security strategy report for any year shall be transmitted on the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31, United States Code.

(b) Each national security strategy report shall set forth the national security strategy of the United States and shall include a comprehensive description and discussion of the following:

(1) The worldwide interests, goals, and objectives of the United States that are vital to the national security of the United States.

(2) The foreign policy, worldwide commitments, and national defense capabilities of the United States necessary to deter aggression and to implement the national security strategy of the United States.

(3) The proposed short-term and long-term uses of the political, economic, military, and other elements of the national power of the United States to protect or promote the interests and achieve the goals and objectives referred to in paragraph (1).

(4) The adequacy of the capabilities of the United States to carry out the national security strategy of the United States, including an evaluation of the balance among the capabilities of all elements of the national power of the United States to support the implementation of the national security strategy.

(5) Such other information as may be necessary to help inform Congress on matters relating to the national security strategy of the United States.

(c) Each national security strategy report shall be transmitted in both a classified and an unclassified form.

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[7] Subsec. (f) was added by sec. 1003 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690; 102 Stat. 4182).

[8] 50 U.S.C. 404a. Sec. 104 was added by sec. 603 of Public Law 99-433 (100 Stat. 1074).

17. Supporting a Ceasefire in and a Negotiated Solution to the Iran–Iraq Conflict

Public Law 100–96 [H.J. Res. 216], 101 Stat. 711, approved August 18, 1987

JOINT RESOLUTION To support a ceasefire in the Iran-Iraq war and a negotiated solution to the conflict.

Whereas the conflict between Iran and Iraq has resulted in more than 400,00 fatalities on both sides, including tens of thousands of adolescents since its beginning in September 1980;

Whereas both sides have resorted to periodic attacks on the civilian population of the other country, including Iranian missile attacks on Baghdad and Iraqi Air Force bombing raids on Iranian populations centers;

Whereas more than 75,000 prisoners of war are being held on both sides;

Whereas Iraq has resorted to the use of chemical weapons, in violation of its obligations under international law not to use such weapons;

Whereas attacks on neutral shipping in the Persian Gulf threaten to limit the access of the United States and its allies to oil supplies from the region;

Whereas Iranian troops continue to occupy Iraqi territory;

Whereas the possibility of a decisive Iranian breakthrough cannot be precluded as long as the war continues;

Whereas such a breakthrough would be destabilizing to a number of friendly countries in the region, which would be increasingly vulnerable as a result of an Iranian victory both to direct Iranian attacks and to Iranian sponsored subversion and terrorist activities;

Whereas a continuation of the conflict will inevitably lead to tens of thousands of additional casualties, including large numbers of civilians; and

Whereas the Iraqi Government has called for an immediate ceasefire and a negotiated solution to the conflict, including a withdrawal to the internationally recognized border: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSEQUENCES OF CONTINUATION OF IRAN-IRAQ WAR.

The Congress finds that continuation of the Iran-Iraq war—

(1) would produce unacceptable levels of death and destruction which would be incompatible with the humanitarian concerns and values of the American people; and

(2) could result in an Iranian breakthrough which would threaten the stability of the entire region and would not be in the strategic interests of the United States.

SEC. 2. SUPPORT FOR A CEASEFIRE AND A NEGOTIATED SOLUTION TO THE CONFLICT.

Accordingly, the policy of the United States Government shall be to support—

(1) a ceasefire and a negotiated solution to the Iran-Iraq conflict, including a withdrawal to the internationally recognized border, and

(2) the establishment of an international tribunal to investigate the origins of the conflict.

SEC. 3. INTERNATIONAL MEASURES IF NEGOTIATIONS AND CEASEFIRE REJECTED.

It is the sense of the Congress that if either party to the Iran-Iraq war rejects peace negotiations and an internationally sanctioned ceasefire, including a withdrawal to the internationally recognized border, the United States should support internationally approved political and economic measures against that country, and maintain existing limitations on trade.

18. Appeal for the Release of Soviet Jewry

Public Law 99-81 [S.J. Res. 161], 99 Stat. 188, approved August 6, 1985

JOINT RESOLUTION To appeal for the release of Soviet Jewry.

Whereas President Reagan recently stated that "Soviet Jewry suffers from persecution, intimidation, and imprisonment within Soviet borders";

Whereas President Reagan stated further that "We will never relinquish our hope for their freedom and we will never cease to work for it," and that "If the Soviet Union truly wants peace, truly wants friendship, then let them release Anatoly Scharansky and free Soviet Jewry.": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in support of the President's position, the Congress calls on the Soviet Union, as an initial gesture—

(1) to release immediately Anatoly Scharansky, Yosef Begun, and all other Prisoners of Conscience, and allow them to leave the Soviet Union;

(2) to issue immediately exit permits to the many known long term "Refuseniks" such as Ida Nudel and Vladimir Slepak; and

(3) to allow those thousands of Jews who wish to emigrate to join their relatives abroad, or to be repatriated to their historic homeland, to leave this year and pledge that such cases shall be dealt with expeditiously and in a humanitarian way during the next three years, thus enabling those who have requested exit permits to leave.

19. Soviet Spouse and Fiance Emigration

Public Law 100-222 [H.J. Res. 430], 101 Stat. 1484, approved December 29, 1987

JOINT RESOLUTION Calling upon the Soviet Union to immediately grant permission to emigrate to all those who wish to join spouses or fiances in the United States.

Whereas the Soviet Union is a signatory of the Final Act of the Conference on Security and Cooperation in Europe which states that "The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character—such as requests submitted by persons who are ill or cold.";

Whereas the Final Act further states that, "In dealing with requests from couples from different participating States, once married, to enable them and the minor children of their marriage to transfer their permanent residence to a State in which either one is normally a resident, the participating States will also apply the provisions accepted for family reunification.";

Whereas the Soviet Union has denied exit visas or marriage permits to several Soviet citizens who are married or engaged to Americans;

Whereas the United States officials have brought these divided spouses and blocked marriage cases to the attention of Soviet diplomats on numerous occasions, including during the recently concluded Washington summit meeting between President Reagan and General Secretary Gorbachev;

Whereas several similar long-term cases have been resolved within the last two years;

Whereas the Soviet Union has initiated a policy of "Democratizatsiya" which claims to give greater emphasis to basic human rights, including the right to live with one's family in the family's country of choice;

Whereas the Soviet Union and the United States have concluded a major arms reduction agreement, and the spirit of this agreement should foster progress between the Soviet Union and the United States in successfully addressing human rights concerns; and

Whereas the Soviet Union, as a signatory of the Final Act of the Conference on Security and Cooperation in Europe, is obligated to comply with the Act's provisions regarding the reunification of divided families and marriage between citizens of different states: Now therefore, be it

Resolved by the Senate and House of Representative of the United States of America in Congress assembled, That the United States—

(1) welcomes the recent granting by the Soviet Union of permission to emigrate to several Soviet citizens who have been

divided for many years from their American spouses and fiances including Galina Goltzman Michelson, Yuri Balovlenkov, Victor Faermark, Elena Kaplan, Victor Novikow, and Leonid Scheiba; and

(2) calls upon the Soviet Union—

(A) to immediately grant to all those who wish to join spouses or fiances in the United States (including Tatyana Alexandrovich, Yeugeni Grigorishin, Vladislav Kostin, Lyubov Kurillo, Pyatras Pakenas, and Sergi Petrov) permission to emigrate with their family members to the United States; and

(B) to give special consideration to cases that have remained unresolved for many years.

SEC. 2. The Secretary of State shall transmit a copy of this joint resolution to the President of the Union of Soviet Socialist Republics.

20. Tercentenary Celebration of the Glorious Revolution

Public Law 99-393 [H.J. Res. 630], 100 Stat. 834, approved August 23, 1986

JOINT RESOLUTION Designating the College of William and Mary as the Official United States representative to the Tercentenary Celebration of the Glorious Revolution to be celebrated jointly in the United States, the Netherlands, and the United Kingdom.

Whereas the years 1988–1989 signify the three hundredth anniversary of the accession of King William III and Queen Mary II to the throne of England;

Whereas the Governments of the Netherlands and the United Kingdom have established a William and Mary Tercentenary Committee for the purposes of celebrating this event in all appropriate ways, including historical, educational, horticultural, maritime, artistic, scientific, and performing arts activities;

Whereas the Tercentenary Committee has invited the College of William and Mary in Virginia, founded by their Joint Majesties under a royal charter granted in 1693, to be the New World representatives of the William and Mary Tercentenary celebration;

Whereas the historical and cultural ties of the 1688–1689 period to the constitutional history of the United States of America are profound, including the beginnings of the limited and constitutional government and the establishment of the English Bill of Rights; and

Whereas the College of William and Mary desires to organize and participate in celebrations relating to the Tercentenary in this country and in the Netherlands and United Kingdom as appropriate; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the College of William and Mary in Virginia is hereby designated as the coordinating body for the 1988–1989 celebrations relating to the world of William and Mary and its relationship to the former British colonies in America now known as the United States of America.

21. National Year of Friendship with Finland—Proclamation

Public Law 99-602 [H.J. Res. 645], 100 Stat. 3358, approved November 6, 1986

JOINT RESOLUTION Designating 1988 as the "National Year of Friendship with Finland".

Whereas the first Finnish settlers arrived in North America in 1638 and, with other Nordic settlers, established the colony of New Sweden in what is now the State of Delaware;

Whereas the settlers of New Sweden introduced European civilization to the Delaware River Valley;

Whereas many of the settlers of New Sweden were either natives of Finland or natives of Sweden who spoke Finnish;

Whereas, in the 17th century, Nordic communities existed in what are now the States of Delaware, Pennsylvania, New Jersey, Maryland, and New York;

Whereas Nordic culture was the 3d most represented culture in the original 13 colonies during the 17th century;

Whereas some of the ancestors of John Morton, a signatory of the Declaration of Independence from Pennsylvania, were born in Finland;

Whereas approximately 700,000 Americans of Finnish descent are now living in the United States;

Whereas the contributions of Americans of Finnish descent to American history, culture, and technology have been continuous and substantial;

Whereas, in 1938, festivities commemorating the 300th anniversary of the founding of New Sweden were attended by officials of the Governments of Finland, Sweden, and the United States;

Whereas the Governor of the State of Delaware has formally invited the people of Finland to participate in festivities in 1988 commemorating the 350th anniversary of New Sweden; and

Whereas the relationship between the people of Finland and the people of the United States should be commemorated: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1988 is designated the "National Year of Friendship with Finland", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such year with appropriate ceremonies and activities.

22. Greek Independence Day: A National Day of Celebration of Greek and American Democracy—Proclamation

Public Law 100-266 [S.J. Res. 218], 102 Stat. 40, approved March 25, 1988

JOINT RESOLUTION To designate March 25, 1988, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States of America drew heavily upon the political and philosophical experience of ancient Greece in forming our representative democracy;

Whereas March 25, 1988, marks the one hundred and sixty-seventh anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire;

Whereas these and other ideals have forged a close bond between our two nations and their peoples; and

Whereas it is proper and desirable to celebrate with the Greek people, and to reaffirm the democratic principles from which our two great nations sprang: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That March 25, 1988, is designated as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy", and that the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the designated day with appropriate ceremonies and activities.

23. National Former Prisoners of War Recognition Day—Proclamation

Public Law 100-269 [S.J. Res. 253], 102 Stat. 43, approved March 28, 1988

JOINT RESOLUTION Designating April 9, 1988, as "National Former Prisoners of War Recognition Day".

Whereas the United States has fought in many wars;
Whereas thousands of members of the Armed Forces of the United States who served in such wars were captured by the enemy and held as prisoners of war;
Whereas many such prisoners of war were subjected to brutal and inhumane treatment by their captors in violation of international codes and customs for the treatment of prisoners of war and died, or were disabled, as a result of such treatment;
Whereas in 1985, the United States Congress (in Public Law 99-145) directed the Department of Defense to issue a medal to former prisoners of war in recognition and commemoration of their great sacrifices in service to our Nation; and
Whereas these great sacrifices of former prisoners of war and their families deserve national recognition: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 9, 1988, is designated as "National Former Prisoners of War Recognition Day" in honor of the members of the Armed Forces of the United States who have been held as prisoners of war, and the President is authorized and requested to issue a proclamation calling upon the people of the United States to commemorate such days with appropriate ceremonies and activities.

24. Jewish Heritage Week

Public Law 100-292 [H.J. Res. 527], 102 Stat. 94, approved April 20, 1988

JOINT RESOLUTION To designate the week of April 17, 1988, through April 24, 1988, as "Jewish Heritage Week".

Whereas April 21, 1988, marks the fortieth anniversary of the founding of the State of Israel;

Whereas the months of March, April, and May contain events of major significance in the Jewish calendar—Passover, the anniversary of the Warsaw Ghetto Uprising, Solidarity Sunday for Soviet Jewry, and Jerusalem Day;

Whereas the Congress recognizes that an understanding of the heritage of all American ethnic groups contributes to the unity of our country; and

Whereas intergroup understanding can be further fostered through an appreciation of the culture, history and traditions of the Jewish community and the contributions of Jews to our country and society: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of April 17, 1988, through April 24, 1988, is designated as "Jewish Heritage Week", and the and the President is authorized and requested to issue a proclamation calling upon the people of the United States, State and local government agencies, and interested organizations to observe the week with appropriate ceremonies, activities and programs.

25. Year of New Sweden Plaques

Public Law 100-295 [H.J. Res. 347], 102 Stat. 127, approved April 25, 1988

JOINT RESOLUTION Recognizing the identical plaques initiated by Sami Bandak, created by Margareta Hennix and Ginvanni Bizzini, and depicting the Calmare Nyckel, the ship that brought the first Swedish settlers to North America, as significant symbols of the "Year of New Sweden"; and providing for the placement of one of such plaques at Fort Christina in the State of Delaware.

Whereas, in Public Law 99-304 (100 Stat. 439), the Congress designated 1988 as the "Year of New Sweden" to commemorate the 350th anniversary of the arrival of the first Swedish settlers in North America;

Whereas such Swedish settlers sailed aboard the Calmare Nyckel, established New Sweden as their first settlement in North America in what is now Wilmington, Delaware, and built Fort Christina to defend their settlement;

Whereas Fort Christina is designated as a National Historic Landmark and will be the site of several activities to observe the "Year of New Sweden";

Whereas, as part of the celebration of the "Year of New Sweden," the artists Margareta Hennix and Ginvanni Bizzini, together with the House of Gustavsberg in Gustavsberg, Sweden, created a limited number of identical plaques depicting the Calmare Nyckel;

Whereas such plaques are painted in silver and bear the seal of His Majesty Carl Gustav XVI, the King of Sweden; and

Whereas a part of the proceeds from the sale of such plaques will be donated to charities that help the handicapped: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RECOGNITION OF CALMARE NYCKEL PLAQUES.

The identical plaques initiated by Sami Bandak, created by Margareta Hennix and Ginvanni Bizzini (together with the House of Gustavsberg), and depicting the Calmare Nyckel, the ship that brought the first Swedish settlers to North America, are hereby recognized as significant symbols of the "Year of New Sweden".

26. Religious Freedom in the Ukraine, U.S.S.R.

Public Law 100-305 [S.J. Res. 235], 102 Stat. 452, approved May 2, 1988

JOINT RESOLUTION Deploring the Soviet Government's active persecution of religious believers in Ukraine.

Whereas 1988 marks the Millennium of the Christianity of Kievan Rus', adopted by Prince Volodymyr in a ceremony on the banks of the Dnieper River;

Whereas today freedom of religion is a fundamental right which is explicitly guaranteed by the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe;

Whereas the Soviet Government has violated the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe by engaging in the persecution of religious believers in the Soviet Union, including the systematic liquidation of the historic and national churches in Ukraine;

Whereas the Ukrainian Orthodox and Ukrainian Catholic Churches, both forcibly liquidated in the 1930's and 1940's, respectively, have remained outlawed while their clergy and laity have been murdered, imprisoned, or exiled for their religious beliefs;

Whereas, despite decades of severe persecution, Ukrainian Orthodox and Ukrainian Catholic believers to this day continue to practice their faiths clandestinely for fear of persecution by Soviet authorities;

Whereas the Soviet Government has, in addition, sought to restrain and undermine the spiritual mission of the Evangelical Church in Ukraine, and has established restrictive legislation in direct contravention of the Biblical precepts that undergird the evangelical movement;

Whereas many members of the Ukrainian Evangelical Churches, in particular unregistered Baptist and Pentecostal congregations, are currently imprisoned and harassed for their faith;

Whereas suspected clergy and lay members of the Ukrainian Orthodox, Ukrainian Catholic, Baptist, and Pentecostal Churches are victimized by job discrimination, their access to religious literature is restricted, and they are subject to various forms of harassment such as house searches, interrogations, and arbitrary arrests by Soviet authorities;

Whereas, despite the Soviet Government's policies of religious persecution in Ukraine, faith in God is widespread among Ukrainians as evidenced by the underground Ukrainian Catholic movement which embraces hundred of priests headed by a number of secret bishops assisted by more than 1,000 religious women in orders; and

Whereas Ukrainian Catholic catacomb bishops, priests, and laity have placed themselves in direct danger of persecution by appealing to the Kremlin to end its prohibition of the Ukrainian Catholic Church: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress of the United States deplores the Soviet Government's active persecution of religious believers in Ukraine, as well as the forcible liquidation of the Ukrainian Orthodox and Ukrainian Catholic Churches.

SEC. 2. On the occasion of the Millennium of Christianity in Kievan Rus', the Congress of the United States—

(1) discourages official participation by the Government of the United States in ceremonies of the Millennium in the Union of Soviet Socialist Republics, so long as individuals remain harassed and imprisoned for their religious beliefs, are denied access to religious literature and the opportunity to receive religious instruction, and the Ukrainian Catholic and Ukrainian Orthodox Churches remain outlawed;

(2) sends its greetings to the Ukrainian people as they mark this solemn event in the history of the Ukrainian nation;

(3) voices its concern for those Ukrainian religious believers who are persecuted for attempting to exercise their rights to religious worship;

(4) urges the President of the United States, the Secretary of State, the United States delegation to the United Nations, the United States delegation to the Vienna Review Meeting of the Conference on Security and Cooperation in Europe to continue to speak out forcefully against violations of religious liberty throughout the Soviet Union and specifically in Ukraine during this anniversary year;

(5) calls upon the Soviet Government to abide by the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe, and release all those imprisoned for their religious beliefs; and

(6) urges, in observance of the Christian Millennium, the Soviet Government to legalize the Ukrainian Orthodox and Ukrainian Catholic Churches.

27. Commending Israel on its 40th Anniversary

Public Law 100–311 [H.J. Res. 541], 102 Stat. 460, approved May 6, 1988

JOINT RESOLUTION Commending the State of Israel and its people on the occasion of the fortieth anniversary of the reestablishment of the independent State of Israel.

Whereas the State of Israel redeems the Biblical promise to the Jewish people of the homeland from which they were exiled for 2,000 years;

Whereas the establishment of the State of Israel as a homeland for the Jews followed the slaughter of more than 6,000,000 Jews during the Holocaust;

Whereas the United States helped in the creation of the State of Israel by extending diplomatic relations to the State of Israel upon its proclamation of independence on May 14, 1948;

Whereas since its establishment 40 years ago, Israel has rebuilt a nation, forged a new society, and created an economic, cultural, and intellectual infrastructure that is nothing short of miraculous;

Whereas despite the heavy costs of six wars, terrorism, international ostracism, and economic boycotts, the people of Israel have relinquished neither their desire to live in peace with their neighbors nor their democratic ideals;

Whereas at great social and financial costs, Israel has absorbed hundreds of thousands of Jews from countries throughout the world, many of them refugees from Arab countries, and fully integrated them into Israeli society;

Whereas the world, particularly the less developed countries of Latin America and Africa, has benefited tremendously from Israeli advances in agriculture, medicine, and industry;

Whereas the United States and Israel have always maintained a special relationship based on mutually shared democratic values, strategic interests, and moral bonds of friendship and respect; and

Whereas the American people have shared an affinity with the people of Israel and regard Israel as a strong and trusted ally and important strategic partner: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States—

(1) hails the historic milestone of 40 years of existence of the reestablished, independent State of Israel;

(2) praises the people of Israel for their remarkable achievements in building a new state and society and maintaining the only democracy in the Middle East in the face of constant belligerence by her neighbors;

(3) notes with deep satisfaction the bonds of friendship and cooperation between the United States and the State of Israel which have meant so much to both countries; and

(4) extends the warmest congratulations and best wishes to the State of Israel and its people for a peaceful and successful future.

28. Baltic Freedom Day—Proclamation

Public Law 100-343 [S.J. Res. 249], 102 Stat. 640, approved June 22, 1988

JOINT RESOLUTION Designating June 14, 1988, as "Baltic Freedom Day".

Whereas the people of the Baltic Republics of Lithuania, Latvia, and Estonia have cherished the principles of religious and political freedom and independence;

Whereas the Baltic Republics have existed as independent, sovereign nations belonging to and fully recognized by the League of Nations;

Whereas the Union of the Soviet Socialist Republics (U.S.S.R.) in collusion with Nazi Germany signed the Molotov-Ribbentrop Pact which allowed the U.S.S.R. in 1940 to illegally seize and occupy the Baltic States and by force incorporated them against their national will and contrary to their desire for independence and sovereignty into the U.S.S.R.;

Whereas due to Soviet and Nazi tyranny, by the end of World War II, the Baltic nations had lost 20 per centum of their total population;

Whereas the people of the Baltic Republics have individual and separate culture, national traditions, and languages distinctively foreign to those of Russia;

Whereas the U.S.S.R. since 1940 has systematically implemented its Baltic genocide by deporting native Baltic peoples from their homelands to forced labor and concentration camps in Siberia and elsewhere, and by relocating masses of Russians to the Baltic Republics, thus threatening the Baltic Cultures with extinction through russification;

Whereas the U.S.S.R. has imposed upon the captive people of the Baltic Republics an oppressive political system which has destroyed every vestige of democracy, civil liberties, and religious freedom;

Whereas the people of Lithuania, Latvia, and Estonia find themselves today subjugated by the U.S.S.R., locked into a union they deplore, denied basic human rights, and persecuted for daring to protest;

Whereas the U.S.S.R. refuses to abide by the Helsinki accords which the U.S.S.R. voluntarily signed;

Whereas the United States stands as a champion of liberty, dedicated to the principles of national self-determination, human rights, and religious freedom, and opposed to oppression and imperialism;

Whereas the United States as a member of the United Nations has repeatedly voted with a majority of that international body to uphold the right of other countries of the world to determine their fates and be free of foreign domination;

Whereas the U.S.S.R. has steadfastly refused to return to the people of the Baltic States of Lithuania, Latvia, and Estonia the right to exist as independent republics separate and apart from the U.S.S.R. or permit a return of personal, political, and religious freedoms; and

Whereas 1988 marks the forty-eighth anniversary of the United States continued policy of nonrecognition of the illegal forcible occupation of Lithuania, Latvia, and Estonia by the U.S.S.R.: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the Congress recognizes the continuing desire and right of the people of Lithuania, Latvia, and Estonia for freedom and independence from the domination of the U.S.S.R.;

(2) the Congress deplores the refusal of the U.S.S.R. to recognize the sovereignty of the Baltic Republics and to yield to their rightful demands for independence from foreign domination and oppression;

(3) the fourteenth day of June 1988, the anniversary of the mass deportation of Baltic peoples from their homelands in 1941, be designated "Baltic Freedom Day" as a symbol of the solidarity of the American people with the aspirations of the enslaved Baltic people; and

(4) the President of the United States be authorized and requested to issue a proclamation for the observance of Baltic Freedom Day with appropriate ceremonies and activities and to submit the issue of the Baltic Republics to the United Nations so that the issue of Baltic self-determination will be brought to the attention of the United Nations General Assembly.

29. United States-Canada Days of Peace and Friendship—Proclamation

Public Law 100-361 [H.J. Res. 587], 102 Stat. 818, approved July 1, 1988

JOINT RESOLUTION Designating July 2 and 3, 1988, as "United States-Canada Days of Peace and Friendship".

Whereas Congress passed a joint resolution designating July 2 and 3, 1987, as "United States-Canada Days of Peace and Friendship" to symbolize the Nation's commitment to improving relations with Canada;

Whereas the Canadian Parliament passed a similar resolution commemorating the continued peace and friendship between the United States and Canada;

Whereas although the democratic systems of government of the United States and Canada are quite different from each other, both systems embody the same ideals of freedom, democracy, human rights, and justice;

Whereas the American Bar Association, the Canadian Bar Association, and the International Rotary are joining with universities in 5 States and 5 Canadian Provinces in a United States-Canada Days of Peace and Friendship project to provide outstanding high school and college students from the United States and Canada with an opportunity to study the constitutions and systems of law and government of the United States and Canada;

Whereas many other international educational projects are also associated with United States-Canada Days of Peace and Friendship;

Whereas the Premier of each of the 10 Canadian Provinces, the Governor of each State that borders Canada, and leaders of education, industry, culture, and other branches of government in the United States and Canada have become honorary sponsors of United States-Canada Days of Peace and Friendship; and

Whereas Congress is deeply interested in the governmental, military, and cultural relations of the United States and Canada: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That July 2 and 3, 1988, are designated as "United States-Canada Days of Peace and Friendship", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such days with appropriate programs, ceremonies, and activities.

30. Geography Awareness Week—Proclamation

Public Law 100-391 [S.J. Res. 263], 102 Stat. 966, approved August 11, 1988

JOINT RESOLUTION To designate the period commencing November 13, 1988, and ending November 19, 1988, as "Geography Awareness Week".

Whereas geography is the study of people, their environments, and their resources;

Whereas the United States of America is a truly unique nation with diverse landscapes, bountiful resources, a distinctive multiethnic population, and a rich cultural heritage, all of which contribute to the status of the United States as a world power;

Whereas, historically, geography has aided Americans in understanding the wholeness of their vast nation and the great abundance of its natural resources;

Whereas geography today offers perspectives and information in understanding ourselves, our relationship to the Earth, and our interdependence with other peoples of the world;

Whereas statistics illustrate that a significant number of American students could not find the United States on a world map, could not identify Alaska and Texas as the Nation's largest States, and could not name the New England States;

Whereas geography has been offered to fewer than one in ten United States secondary school students as part of the curriculum;

Whereas departments of geography are being eliminated from American institutes of higher learning, thus endangering the discipline of geography in the United States;

Whereas traditional geography has virtually disappeared from the curricula of American school while still being taught as a basic subject in other countries, including the United Kingdom, Canada, Japan, and the Soviet Union;

Whereas an ignorance of geography, foreign languages, and cultures places the United States at a disadvantage with other countries in matters of business, politics, and the environment;

Whereas the United States is a nation of worldwide involvements and global influence, the responsibilities of which demand an understanding of the lands, languages, and cultures of the world; and

Whereas national attention must be focused on the integral role that knowledge of world geography plays in preparing citizens of the United States for the future of an increasingly interdependent and interconnected world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of American in Congress assembled, That the period commencing November 13, 1988, and ending November 19, 1988, is designated as "Geography Awareness Week", and the President is

authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

31. German-American Day

Public Law 100-392 [S.J. Res. 273], 102 Stat. 968, approved August 11, 1988

JOINT RESOLUTION Designating October 6, 1988, as "German-American Day".

Whereas, German-Americans, through their work and contributions to the culture of the United States since the arrival of the first German immigrants in the United States on October 6, 1683, have earned this very special day and tribute to their achievements;

Whereas, as they have before, so will Americans of German descent continue to contribute to the life and culture of the United States, and will work for and will support the Government of the United States, its democratic principles and the freedom of all people everywhere;

Whereas such contributions should be recognized and celebrated in 1988, and annually thereafter; and

Whereas common ties and lasting friendship exist between the United States and the Federal Republic of Germany and other German speaking countries: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 6, 1988, is designated as "German-American Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day with appropriate ceremonies and activities.

32. National POW/MIA Recognition Day

Public Law 100-431 [H.J. Res. 453], 102 Stat. 1637, approved September 15, 1988

JOINT RESOLUTION Designating September 16, 1988, as "National POW/MIA Recognition Day".

Whereas the United States has fought in many wars; Whereas thousands of Americans who served in those wars were captured by the enemy or are missing in action;

Whereas many American prisoners of war were subjected to brutal and inhuman treatment by their enemy captors in violation of international codes and customs for the treatment of prisoners of war, and many such prisoners of war died from such treatment;

Whereas many Americans are still listed as missing and unaccounted for, and the uncertainty surrounding their fates has caused their families to suffer acute hardship; and

Whereas the sacrifices of American prisoners and Americans missing in action and their families are deserving of national recognition: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 16, 1988, is designated as "National POW/MIA Recognition Day". The President is authorized and requested to issue a proclamation calling upon the people of the United States to recognize that day with appropriate ceremonies and activities.

89-453 O - 89 - 21

33. National Day of Recognition for Mohandas K. Gandhi

Public Law 100-468 [S.J. Res. 169], 102 Stat. 2278, approved October 3, 1988

JOINT RESOLUTION Designating October 2, 1988, as a national day of recognition for Mohandas K. Gandhi.

Whereas Mohandas K. Gandhi sought to apply the values of truth and love, which are regarded as most precious moral values in personal life, in the difficult domain of political and social action;

Whereas Gandhi remained a relentless champion of human rights and human dignity for all people, including women and minorities, throughout his lifetime;

Whereas Gandhi was one of the leading figures in the effort to win freedom for his people in India and thereby helped sow the seeds of freedom and liberation in Asia and Africa;

Whereas Gandhi's unmovable faith in the power of nonviolent struggle was a powerful inspiration for Dr. Martin Luther King and the civil rights movement in the United States;

Whereas Gandhi identified himself totally with the oppressed and sought to change their lives through the moral persuasion of the oppressor;

Whereas Gandhi proclaimed that all humans are equal and that life is sacred, and treated that belief with an inviolable trust, thus echoing Abraham Lincoln;

Whereas Gandhi used truth and the moral force it carried to guide both his personal and public life;

Whereas Gandhi drew inspiration from Ralph Waldo Emerson and Henry David Thoreau, two of America's great thinkers, in formulating his philosophy of civil disobedience was an inherent right of all citizens;

Whereas Gandhi believed that the true democrat is one who by purely nonviolent means defends his liberty and therefore, the liberty of his country, and ultimately that of the whole of mankind;

Whereas Gandhi believed that the arms race placed an unbearable burden on all of humanity;

Whereas Gandhi staunchly supported the claim that no society can possibly be built on the denial of individual freedom;

Whereas Gandhi believed that a society that allows double standards for its citizens and its leaders is self-destructive, that political and personal morality must coincide and extend to human beings in all walks of life, and that the purification of politics requires that men and women of courage and integrity remove all taint of double standards; and

Whereas Gandhi was one of those truly rare individuals who combined so admirably in word and deed the highest moral aspirations of mankind; Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 2, 1988, is designated as a national day of recognition for Mohandas K. Gandhi, and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such a day with appropriate ceremonies and activities.

34. Commemoration of the 200th Anniversary of the French Revolution

Public Law 100-482 [S.J. Res. 317], 102 Stat. 2337, approved October 11, 1988

JOINT RESOLUTION Commemorating the bicentennial of the French Revolution and the Declaration of the Rights of Man and of the Citizen.

Whereas the Treaty of Commerce and Amity concluded February 6, 1778, between France and the United States was the first alliance entered into by the United States;

Whereas the independence of the United States was achieved with significant assistance from France and from individual citizens of France;

Whereas the ideals of liberty and freedom which animated the people of the United States during the French Revolution were shared by many of the people of France and are held sacred by both peoples today;

Whereas the year 1789 was of particular significance in the history of both France and the United States, marking the opening chapter of the French Revolution and the concluding chapter of the American Revolution;

Whereas within a period of 31 days, the National Assembly of France approved the Declaration of the Rights of Man and of the Citizen on August 26, 1789, and the Congress of the United States approved the Bill of Rights on September 26, 1789, thereby proclaiming the sanctity of human rights on both sides of the Atlantic Ocean and guaranteeing them for future generations;

Whereas the government of France has established a Commission for the Bicentennial of the French Revolution and the Declaration of the Rights of Man and of the Citizen; and

Whereas an American Committee on the French Revolution has been organized to plan an appropriate commemoration in the United States of the bicentennial of the historic events of 1789 and of the shared aspirations, ideals, and experiences of the French and American peoples: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress and People of the United States extend to the people of France and expression of friendship and high regard on the occasion of the bicentennial of the French Resolution.

(b) The Congress hereby—

(1) urges the people of the United States to observe the bicentennial of the French Resolution as may be appropriate to the occasion; and

(2) finds with pride and satisfaction that France and the United States remain fully committee to the principles of the

Declaration of the Rights of Man of the Citizen, and the Bill of Rights, respectively.

(c)(1) There shall be printed as a Senate document during the bicentennial year 1989 the Declaration of the Rights of Man and of the Citizen, and the Bill of Righters, with accompanying historical notes, including

(2) bound volumes suitable for presentation to the President of the French Republic, the President of the Senate of France, and the President of the National Assembly of France.

35. Restoration of a Free and Independent Cambodia

Public Law 100-502 [H.J. Res. 602], 102 Stat. 2504, approved October 18, 1988

JOINT RESOLUTION In support of the restoration of a free and independent Cambodia, the withdrawal of Vietnamese forces, and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge.

Whereas the people of Cambodia suffered terribly under the despotic regime of the Khmer Rouge and subsequently during the occupation by the Socialist Republic of Vietnam;

Whereas the people of Cambodia have been victims of genocide, enslavement, starvation, and other deliberate acts of cruelty perpetrated by the Khmer Rouge, resulting in the deaths of over one million Cambodian people;

Whereas the Socialist Republic of Vietnam has maintained armed forces within Cambodia, thereby perpetuating their domination and forestalling the realization of self-determination by the Cambodian people;

Whereas the Vietnamese-installed Government of the People's Republic of Kampuchea has seriously abused the human and civil rights of the Cambodian people;

Whereas due to fears of persecution in their homeland, hundreds of thousands of Cambodians have become refugees or displaced persons, seeking first asylum in other Southeast Asian nations and subsequent resettlement in third countries;

Whereas the United States has supported the non-Communist resistance led by Prince Norodom Sihanouk and Son Sann in order to end the Vietnamese occupation of Cambodia and recover for the Cambodian people their sovereign rights;

Whereas Prince Norodom Sihanouk has with courage and conviction devoted his energies to restoring his homeland to independence, neutrality, peace, and harmony;

Whereas the Socialist Republic of Vietnam has declared its intention to withdraw forces from Cambodia by the end of 1990 and has pledged to join negotiations for a resolution of the Cambodian question;

Whereas dialogue and diplomatic discussions have increased on a regional and international basis concerning the future of Cambodia;

Whereas the stability of Southeast Asia can only be assured once peace is restored to Cambodia and the rights of the Cambodian people are universally respected; and

Whereas it is a moral imperative of all nations that the people of Cambodia no longer be made to suffer at the hands of the Khmer Rouge or any other force that would do further harm to the Khmer people or further endanger their cultural and religious heritage: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States—

(1) declares that all parties seeking a settlement of the conflict in Cambodia, including the United States, should have among their highest priorities the restoration of a free and independent Cambodia and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge;

(2) calls on the Socialist Republic of Vietnam to fully withdraw its armed forces from Cambodia, and further calls on all parties to respect the territorial integrity of Cambodia and to deny safe haven to Khmer Rouge forces seeking the overthrow of a newly formed sovereign Cambodian government;

(3) should seek a Cambodian settlement which contains workable measures to prevent a Khmer Rouge return to power, including a cessation of the flow of war materiel and the accumulation of caches of arms that might ultimately be used to terrorize the Cambodian people and to threaten a legitimate government of Cambodia;

(4) declares that the United States must remain vigilant to ensure that genocide is never tolerated or forgotten anywhere in the world, and that those responsible for such heinous crimes should be held accountable under international law, as prescribed by the Convention on the Prevention and Punishment of the Crime of Genocide;

(5) declares that the United States in cooperation with the international community should use all appropriate means available to prevent a return to power of Pol Pot, the top echelon of the Khmer Rouge, and their armed forces, so that the Cambodian people might genuinely be free to pursue self-determination without the spectre of coercion, intimidation, and torture that are known elements of the Khmer Rouge ideology;

(6) should seek the support of the member nations of the Association of Southeast Asian nations (ASEAN) and other nations for the inclusion, in declarations and resolutions promulgated by the United Nations pertaining to the Cambodian conflict, of the principle that those responsible for acts of genocide and massive violations of internationally recognized human rights shall not return to positions of political power in Cambodia upon withdrawal of the foreign occupation forces;

(7) declares that the United States, in conjunction with the member nations of the Association of Southeast Asian Nations (ASEAN), should continue to provide assistance, support, and encouragement to the non-Communist Cambodian forces, particularly their efforts to achieve a negotiated settlement that would permit self-determination for the Cambodian people and the return of refugees in safety and dignity to their homeland;

(8) declares that the United States, in consultation with the member nations of the Association of Southeast Asia Nations, should consider whether such a settlement could be facilitated by the convening of an international conference on Cambodia and the provision of an international peacekeeping force that, in addition to performing other appropriate peacekeeping

duties, could also supervise the withdrawal of Vietnamese forces and the holding of free and fair elections in Cambodia;

(9) should seek to ensure—

(A) that the refugee camps controlled by the Khmer Rouge are opened to inspection by international organizations, and

(B) that those within those camps have the freedom to move to non-Khmer rouge controlled camps if they desire to do so; and

(10) should attempt to halt the flow of arms and military equipment to the Khmer Rouge by urging those nations providing assistance to the Khmer Rouge to cease doing so.

36. Week of Remembrance of Kristallnacht

Public Law 100-632 [H.J. Res. 654], 102 Stat. 3319, approved November 7, 1988

JOINT RESOLUTION Designating November 4 through 10, 1988, as "Week of Remembrance of Kristallnacht".

Whereas November 9-10, 1988, marks the fiftieth anniversary of Kristallnacht, The Night of Broken Glass;

Whereas Kristallnacht was sanctioned by the Nazi state to terrorize the Jewish citizens of Germany and Austria;

Whereas during Kristallnacht, hundreds of synagogues in Germany and Austria were burned and destroyed, businesses and homes where ransacked, scores of innocent people were killed because they were Jews, and thousands of such people were arrested and sent to concentration camps;

Whereas the lack of any response from civilized nations led the governments of Germany and Austria to believe that further atrocities would go unpunished;

Whereas this belief brought about mass murders and carnage on a scale never before seen in human history;

Whereas Kristallnacht was a watershed event in Nazi rule and served as a prelude to the Second World War and the death of millions of innocent people;

Whereas the reign of the Nazi government marks one of the darkest periods in civilized history; and

Whereas Kristallnacht should remind us all that evil must be confronted forcefully and the civilized world cannot watch idly while barbarism and mass murder are committed against innocent peoples: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 4 through 10, 1988, is designated as the "Week of Remembrance of Kristallnacht", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

37. National Sir Winston Churchill Recognition Week

Public Law 100-663 [S.J. Res. 340], 102 Stat. 3925, approved November 15, 1988

JOINT RESOLUTION Designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week".

Whereas April 9, 1988, marks the 25th anniversary of the granting of honorary citizenship to Sir Winston Churchill by the United States;

Whereas Sir Winston Churchill was born on November 30, 1874;

Whereas Sir Winston Churchill's mother, Jennie Jerome Churchill, was an American, thereby making Sir Winston Churchill a son of America though a subject of Great Britain;

Whereas Sir Winston Churchill inspired the world with his commitment to the ideals of freedom, not only during peace time but during the darkest moments of World War II;

Whereas Sir Winston Churchill recognized the importance of understanding history and the relevance of history to the present day; and

Whereas Sir Winston Churchill made significant contributions to the modern world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 27 through December 3, 1988, is designated as "National Sir Winston Churchill Recognition Week," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

USE OF THE INDEX

The index is organized by subject matter only. Each subject entry also includes the legal citation indicating the document to which it refers. These legal citations were not chosen on the basis of standard legal citation form, but rather for the amount of information they provided and for convenience in producing a computer-printed index. A list of abbreviations used in the legal citation section of the index appears below:

Art—Article
EO—Executive Order
fn—Footnote
FR—Federal Register
H Con Res—House Concurrent Resolution
HR—House Bill
H Res—House Resolution
PL—Public Law
S—Senate Bill
S Con Res—Senate Concurrent Resolution
S Res—Senate Resolution
Sec—Section
Stat—United States Statutes at Large
USC—United States Code

Page references, wherever possible, indicate the exact page on which mention of the entry is made. Entries of a more general nature that refer to a large section or to an entire document are listed with the page on which the reference begins.

GLOSSARY OF TERMS USED IN THE INDEX

ABM	Anti-Ballistic Missile
ACDA	Arms Control and Disarmament Agency
ADB	Asian Development Bank
AFDB	African Development Bank
AFDF	African Development Fund
AID	Agency for International Development
CBI	Caribbean Basin Initiative
EEC	European Economic Community
FAO	Food and Agriculture Organization
FCC	Federal Communications Commission
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
IADB	Inter-American Development Bank
IAEA	International Atomic Energy Agency
ICA	International Communication Agency
IDA	International Development Association
IDCA	International Development Cooperation Agency
IFAD	Internationl Fund for Agricultural Development
IFC	International Finance Corporation
IFIs	International Financial Institutions
IMF	International Monetary Fund
MDBs	Multilateral Development Banks
MIA	Missing-in-Action
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OPIC	Overseas Private Investment Corporation
POW	Prisoners-of-War
SALT	Strategic Arms Limitation Talk
SDAF	Special Defense Acquisition Fund
SEATO	Southeast Asia Treaty Organization
U.N.	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific, and Cultural Organization
USIA	United States Information Agency.

A

ABM TREATY			
ABSENCE OF			
EFFECT ON STRATEGIC OFFENSIVE AND DEFENSIVE PROGRAMS	PL 100-180	SEC 233	VOL. II
LESS RESTRICTIVE INTERPRETATION OF	PL 99-661	SEC 217	VOL. I
VIOLATION OF BY SOVIET UNION			
SENSE OF CONGRESS	PL 100-180	SEC 902	VOL. II
ABORTIONS			
AID PROHIBITIONS ON	PL 100-461	SEC 536	VOL. I
FOREIGN AID			
PROHIBITION	PL 87-195	SEC 104(F)	VOL. I
INVOLUNTARY			
FOREIGN AID			
PROHIBITION	PL 100-461	TITLE II	VOL. I
LOBBYING FOR			
AID PROHIBITION	PL 100-461	SEC 525	VOL. I
PEACE CORPS FUNDS			
PROHIBITION ON USE OF	PL 100-461	TITLE II	VOL. I
ACDA			
ADMINISTRATION	PL 87-297	SEC 25	VOL. II
ADVISORY BOARDS	PL 87-297	SEC 41	VOL. II
APPROPRIATIONS, 1989	PL 100-459	TITLE V	VOL. II
AUDIT OF	PL 87-297	SEC 46	VOL. II
AUTHORIZATION OF			
APPROPRIATIONS FOR	PL 87-297	SEC 48-49	VOL. II
CLASSIFIED INFORMATION			
SECURITY			
REPORT TO CONGRESS	PL 100-213	SEC 6	VOL. II
FUNCTIONS	PL 87-297	SEC 2	VOL. II
	PL 87-297	SEC 31-35	VOL. II
GENERAL ADVISORY COMMITTEE	PL 87-297	SEC 26	VOL. II
INSPECTOR GENERAL, OFFICE OF			
ESTABLISHMENT OF	PL 87-297	SEC 53	VOL. II
REPORT TO CONGRESS	PL 87-297	SEC 53	VOL. II
INTERAGENCY COORDINATION	PL 87-297	SEC 35	VOL. II
INTERNATIONAL NEGOTIATIONS	PL 87-297	SEC 34	VOL. II
ORGANIZATION	PL 87-297	SEC 21-26	VOL. II
PATENTS	PL 87-297	SEC 32	VOL. II
PERSONNEL	PL 87-297	SEC 22-24	VOL. II
ATTORNEYS	PL 87-297	SEC 41	VOL. II
COMPENSATION	PL 87-297	SEC 44	VOL. II
CONSULTANTS	PL 87-297	SEC 41	VOL. II
FOREIGN SERVICE	PL 87-297	SEC 42	VOL. II
SECURITY INVESTIGATIONS	PL 87-297	SEC 45	VOL. II
PURPOSE	PL 87-297	SEC 2	VOL. II
RESEARCH	PL 87-297	SEC 31	VOL. II
SECRETARY OF STATE'S AUTHORITY	PL 87-297	SEC 22	VOL. II
TRANSFER OF FUNCTIONS	PL 87-297	SEC 47	VOL. II
U.S. DISARMAMENT ADMINISTRATION	PL 87-297	SEC 47	VOL. II
VISITING SCHOLAR PROGRAM	PL 87-297	SEC 28	VOL. II
ACHILLE LAURO			
PUNISHMENT OF HIJACKERS	PL 99-177		VOL. II
ACID RAIN	PL 98-164	SEC 1008	VOL. II
ACT FOR THE PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS OF THE UNITED STATES	PL 92-539		VOL. II
ACT OF STATE DOCTRINE			
COURTS TO DECLINE RECOGNITION OF	PL 87-195	SEC 620(E)(2)	VOL. I
ACT TO COMBAT INTERNATIONAL TERRORISM, 1984	PL 98-533		VOL. II
ACT TO PREVENT POLLUTION FROM SHIPS	PL 96-478		84
ACTION			
(SEE ALSO FOREIGN SERVICE)			
(SEE ALSO PEACE CORPS)			
INTERDEPARTMENTAL COOPERATION	EO 12137	SEC 1-602	VOL. I
TRANSFER OF FUNCTIONS TO PEACE CORPS	PL 97-113	SEC 601(B)	VOL. I
ADB	PL 89-369		VOL. III
ASIAN DEVELOPMENT FUND			
U.S. CONTRIBUTION	PL 89-369	SEC 24	VOL. III
AUTHORIZATION OF			
APPROPRIATIONS FOR	PL 93-189	SEC 28	VOL. I
CAPITAL STOCK			
PAYMENT OF			
SUBSCRIPTIONS	PL 89-369	SEC 20-26	VOL. III
	PL 89-369	SEC 7	VOL. III

			PAGE
ADB--CONTINUED			
CHINA (PEOPLE'S REPUBLIC OF) AS MEMBER	PL 89-369	SEC 27(C)	VOL. III
COURTS			
JURISDICTION	PL 89-369	SEC 8	VOL. III
LOANS			
VOTING AGAINST	PL 89-369	SEC 18-19	VOL. III
MEMBER BANKS	PL 89-369	SEC 6	VOL. III
PRIVILEGES AND IMMUNITIES	PL 89-369	SEC 9	VOL. III
REPORTS TO CONGRESS	PL 89-369	SEC 4	VOL. III
SECURITIES	PL 89-369	SEC 10-11	VOL. III
SECURITIES AND EXCHANGE COMMISSION			
REPORTS	PL 89-369	SEC 11	VOL. III
SOUTHEAST ASIA			
EMPHASIS ON	PL 89-369	SEC 13	VOL. III
SPECIAL FUNDS			
U.S. CONTRIBUTION	PL 89-369	SEC 26	VOL. III
U.S. CONTRIBUTIONS	PL 89-369	SEC 21-28	VOL. III
TAIWAN AS MEMBER	PL 89-369	SEC 25	VOL. III
U.S. MEMBERSHIP			
ACCEPTANCE OF	PL 89-369	SEC 2	VOL. III
U.S. SPECIAL RESOURCES	PL 89-369	SEC 12-17	VOL. III
WHERE SPENT	PL 89-369	SEC 13	VOL. III
ADJUSTMENT ASSISTANCE (SEE TRADE INJURIES)			
ADJUSTMENT ASSISTANCE COORDINATING COMMITTEE			
TRADE INJUPIES	PL 93-618	SEC 281	VOL. III
ADMINISTRATION OF JUSTICE PROGRAM			
ESF			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS			
ADVICE TO PRESIDENT	PL 93-618	SEC 135	VOL. III
ADVISORY PANEL ON OVERSEAS SECURITY			
REPORT TO CONGRESS	PL 99-399	SEC 407	VOL. II
AEC			
REPORTS TO CONGRESS	PL 83-703	SEC 251	298
RESTRICTED DATA			
AVAILABLE TO OTHER GOVERNMENT AGENCIES	PL 87-297	SEC 45	VOL. II
AFDB			
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
U.S. FOREIGN AID	PL 87-195	SEC 206	VOL. I
U.S. GOVERNOR TO	PL 97-35	SEC 1333	VOL. III
U.S. MEMBERSHIP	PL 97-35	SEC 1332	VOL. III
U.S. SUBSCRIPTION OF CAPITAL STOCK			
AUTHORIZATION	PL 97-35	SEC 1338	VOL. III
INCREASE AUTHORIZATION	PL 97-35	SEC 1343	VOL. III
AFDF			
CONTRIBUTIONS TO, 1989	PL 100-461	TITLE I	VOL. I
COURTS			
JURISDICTION	PL 94-302	SEC 208	VOL. III
U.S. GOVERNOR	PL 94-302	SEC 203	VOL. III
U.S. PARTICIPATION IN	PL 94-302	SEC 202	VOL. III
U.S. SUBSCRIPTION			
AUTHORIZATION	PL 94-302	SEC 206	VOL. III
INCREASE	PL 94-302	SEC 211	VOL. III
VOTING INSTRUCTIONS	PL 94-302	SEC 210	VOL. III
AFGHAN ALLIANCE DAY	PL 99-354		549
AFGHAN RESISTANCE			
U.S. SPECIAL ENVOY TO ESTABLISHMENT OF	PL 100-459	SEC 306(C)(1)	VOL. II
AFGHANISTAN			
ECONOMIC SUPPORT FUND	PL 99-83	SEC 904	VOL. I
HUMANITARIAN			
ASSISTANCE	PL 99-661	SEC 331	VOL. I
HUMANITARIAN ASSISTANCE	PL 100-461	SEC 537	VOL. I
	PL 100-463	TITLE II	VOL. I
SENSE OF CONGRESS	PL 98-525	SEC 1542	VOL. I
OCCUPATION BY SOVIET UNION	PL 100-204	SEC 1241	VOL. II
U.S. POLICY TOWARD	PL 100-204	SEC 1242	VOL. II
RADIO BROADCASTING TO	PL 93-129	SEC 14	VOL. II
REFUGEES			
HUMANITARIAN RELIEF	PL 99-145	SEC 305	VOL. I
U.S. POLICY TOWARD			
FINDINGS OF CONGRESS	PL 99-399	SEC 1308	VOL. II
AFGHANISTAN WAR			
U.S. JOURNALISTS COVERING			
PRESIDENTIAL MEDAL OF FREEDOM	PL 100-463	SEC 8144	VOL. I
AFGHANISTAN-U.S. RELATIONS			
AFGHAN RESISTANCE			
SENSE OF CONGRESS	PL 100-459	SEC 306(A)(2)	VOL. II
CONGRESSIONAL FINDINGS	PL 100-459	SEC 306(A)(1)	VOL. II

			PAGE
AFGHANISTAN-U.S. RELATIONS--CONTINUED			
FOREIGN AID			
PROHIBITIONS ON	PL 100-461	SEC 592	VOL. I
FOREIGN AID PROHIBITED	PL 87-195	SEC 620D	VOL. I
MOST-FAVORED-NATION TREATMENT			
AUTHORITY TO DENY	PL 99-190	TITLE V	VOL. III
TRADE RELATIONS	PL 99-190	TITLE V	VOL. III
AFRICA			
CUBAN TROOPS	PL 95-426	SEC 613	VOL. II
LOCUST	PL 95-424	SEC 120	VOL. I
AFRICA-U.S. RELATIONS			
FOREIGN AID	PL 87-195	SEC 206	VOL. I
FAMINE RELIEF	PL 87-195	SEC 495K	VOL. I
AFRICA, SUB-SAHARAN			
COORDINATING COMMITTEE FOR ESTABLISHMENT OF	EO 12599		VOL. I
DEVELOPMENT ASSISTANCE			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
FINANCING HUMAN WELFARE PROGRAMS			
DEBT REDUCTION	PL 95-118	SEC 1609	VOL. III
AFRICA, SUB-SAHARAN-U.S. RELATIONS			
ARMS SALES			
LIMITED	PL 90-629	SEC 33	VOL. I
ECONOMIC POLICIES			
COORDINATION OF	EO 12599		VOL. I
AFRICAN DEVELOPMENT BANK (SEE AFDB)			
AFRICAN DEVELOPMENT BANK ACT	PL 97-35	SEC 1331	VOL. III
AFRICAN DEVELOPMENT FOUNDATION	PL 95-424	SEC 122	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
AUTHORIZATION OF APPROPRIATIONS, 1984	PL 98-151	SEC 101(B)(2)	VOL. I
ESTABLISHED	PL 96-533	SEC 503	VOL. I
MANAGEMENT OF	PL 96-533	SEC 507	VOL. I
PURPOSES	PL 96-533	SEC 504	VOL. I
AFRICAN DEVELOPMENT FOUNDATION ACT	PL 96-533	SEC 501	VOL. I
AFRICAN DEVELOPMENT FUND (SEE AFDF)			
AFRICAN DEVELOPMENT FUND ACT	PL 94-302		VOL. III
AFRICAN ELEPHANT CONSERVATION ACT	PL 100-478	SEC 2001	390
AFRICAN ELEPHANT CONSERVATION FUND	PL 100-478	SEC 2102	392
AFRICAN FAMINE RELIEF AND RECOVERY ACT OF 1985	PL 99-8		VOL. I
AFRICAN NATIONAL CONGRESS			
U.S. POLICY TOWARD	PL 99-440	TITLE I	VOL. III
AGENCY FOR INTERNATIONAL DEVELOPMENT (SEE AID)			
AGENTS (SEE FOREIGN AGENTS REGISTRATION)			
AGING			
U.N. ASSEMBLY ON	PL 95-424	SEC 117(E)	VOL. I
	PL 98-164	SEC 119	VOL. II
AGRICULTURAL ACT OF 1949	PL 81-439		VOL. I
AGRICULTURAL AID AND TRADE MISSIONS			
ESTABLISHMENT OF	PL 100-202	SEC 101(D)	VOL. I
AGRICULTURAL AID AND TRADE MISSIONS ACT	PL 100-202	SEC 101(D)	VOL. I
AGRICULTURAL COMMODITIES (SEE ALSO AGRICULTURAL COMMODITY SALES)			
BARTER OF	PL 100-418	SEC 4309	VOL. I
CALCULATION OF SUBSIDIES	PL 71-361	SEC 7718	VOL. III
EGGS AND EGG PRODUCTS			
INTERNATIONAL TRADE	PL 100-418	SEC 4606	VOL. I
EXCHANGED FOR STRATEGIC MATERIALS	PL 81-439	SEC 416(D)	VOL. I
	PL 99-198	SEC 1167	VOL. I
EXPORT CREDITS	PL 99-198	SEC 1125	VOL. I
EXPORT SUBSIDIES	PL 99-198	SEC 1123	VOL. I
EXPORTS			
COOPERATOR MARKET DEVELOPMENT PROGRAM	PL 99-198	SEC 1126	VOL. I
EXPANDING U.S. MARKETS	PL 99-198	SEC 1127	VOL. I
FINDINGS	PL 100-418	SEC 4101	VOL. I
MARKET DEVELOPMENT ACTIVITIES			
AUTHORIZATION	PL 100-418	SEC 4215	VOL. I
POLICY	PL 100-418	SEC 4102	VOL. I
PROGRAMS IMPACTING ON	PL 99-198	SEC 1162	VOL. I
U.S. MARITIME INDUSTRY	PL 99-198	SEC 1141	VOL. I

		PAGE
AGRICULTURAL COMMODITIES—CONTINUED		
IMPORTS		
STUDIES ON	PL 100-418 SEC 4501-4509	VOL. I
OF U.S. ORIGIN		
PURCHASING	PL 99-83 SEC 205	VOL. I
TIED AID CREDITS PROGRAM	PL 99-83 SEC 206	VOL. I
TRADE AGREEMENTS WITH		
CERTAIN COUNTRIES	PL 100-418 SEC 4203	VOL. I
TRANSPORTED IN U.S. SHIPS	49 STAT 1985 SEC 901B	VOL. I
U.S. PRODUCTION		
ADVERSE IMPACT OF MDBS POLICIES	PL 95-118 SEC 1401-1403	VOL. III
AGRICULTURAL COMMODITY SALES		
(SEE ALSO FOOD AID)		
(SEE ALSO FOOD FOR PEACE)		
ADMINISTRATION OF	EO 12220	VOL. I
ADVISORY COMMITTEE	PL 83-480 SEC 407	VOL. I
AGRICULTURAL COMMODITY		
DEFINED	PL 83-480 SEC 402	VOL. I
APPROPRIATION FOR PL 480, 1989	PL 100-460	VOL. I
AUTHORIZATION OF		
APPROPRIATIONS	PL 83-480 SEC 403	VOL. I
AVAILABILITY ON MULTIYEAR BASIS	PL 83-480 SEC 413	VOL. I
BILATERAL AGREEMENTS		
CONDITIONED	PL 83-480 SEC 109	VOL. I
TERMINATION	PL 83-480 SEC 109	VOL. I
COMMODITIES AVAILABLE	PL 83-480 SEC 401	VOL. I
COMMODITY CREDIT		
CORPORATION	PL 83-480 SEC 102	VOL. I
CONGRESSIONAL CONSULTATION	PL 97-98 SEC 1202	VOL. I
CONSULTATION WITH OTHER		
EXPORTING NATIONS	PL 97-98 SEC 1206	VOL. I
CONTROL OF	PL 97-444 SEC 238	VOL. III
COTTON SALES	PL 85-931 SEC 8	VOL. I
DOLLARS ON CREDIT TERMS	PL 83-480 SEC 106	VOL. I
EDUCATIONAL AND CULTURAL		
EXCHANGE	PL 83-480 SEC 104(B)(2)	VOL. I
EXCHANGED FOR STRATEGIC		
MATERIALS	PL 83-480 SEC 310	VOL. I
EXPORT ASSISTANCE	PL 98-258 SEC 501	VOL. I
EXPORT CONTROLS		
PROTECTION	PL 97-98 SEC 1204-1205	VOL. I
EXPORT SUBSIDIES		
IMF	PL 79-171 SEC 44	VOL. III
EXPORT SUBSIDY PROGRAM	PL 97-98 SEC 1203	VOL. I
EXPORTS		
DAIRY PRODUCTS	PL 99-198 SEC 1163	VOL. I
EXPORTS PROHIBITED TO USSR		
COMMODITY CREDIT CORPORATION PURCHASES	PL 96-494 SEC 206	VOL. I
PRICE SUPPORTS	PL 96-494 SEC 203	VOL. I
FINANCING	PL 83-480 SEC 204	VOL. I
FOOD FOR DEVELOPMENT		
PROGRAM	PL 83-480 SEC 301	VOL. I
COUNTRY DESIGNATION	PL 83-480 SEC 302	VOL. I
FOREIGN CURRENCIES	PL 93-205 SEC 8	199
RELEASE PROHIBITED	PL 87-195 SEC 612	VOL. I
FOREIGN CURRENCY USAGE BY PVOS	PL 83-480 SEC 207	VOL. I
FOREIGN CURRENCY USES		
BALANCE OF PAYMENTS	PL 83-480 SEC 105	VOL. I
CONDITIONS ON	PL 83-480 SEC 206	VOL. I
DEBT PAYMENTS	PL 83-480 SEC 104(A)	VOL. I
DISASTER RELIEF	PL 83-480 SEC 104(D)	VOL. I
POPULATION GROWTH	PL 83-480 SEC 104(H)	VOL. I
REPORT TO CONGRESS	PL 81-439 SEC 416(B)(9)(B)	VOL. I
TRAVEL	PL 83-480 SEC 104(J)	VOL. I
FOREIGN SELF-HELP MEASURES	PL 83-480 SEC 109	VOL. I
FOREIGN SELF-SUFFICIENCY	PL 83-480 SEC 406	VOL. I
FOREIGN SERVICE BUILDINGS	PL 83-480 SEC 104(B)(4)	VOL. I
FREE ENTERPRISE		
AGRICULTURAL POLICIES	PL 99-198 SEC 1110	VOL. I
FRIENDLY COUNTRIES		
DEFINED	PL 83-480 SEC 103(D)	VOL. I
HUMAN RIGHTS	PL 83-480 SEC 112	VOL. I
MARKETS DEVELOPED	PL 83-480 SEC 104(B)(1)	VOL. I
NORTH VIETNAM RESTRICTIONS	PL 83-480 SEC 411	VOL. I
OBJECTIVES	PL 83-480 SEC 404(A)	VOL. I
OPERATION OF REVIEW	PL 95-113 SEC 1210	VOL. I
POLICY DIRECTION	PL 83-480 SEC 114	VOL. I
POPULATION GROWTH	PL 83-480 SEC 405	VOL. I
PRIVATE ENTERPRISE	PL 83-480 SEC 107	VOL. I
FOREIGN CURRENCY USES	PL 83-480 SEC 108	VOL. I
PROMOTION OF	PL 97-253 SEC 135	VOL. I
PUBLICITY	PL 83-480 SEC 103(L)	VOL. I
PUBLICITY OF U.S. ROLE	PL 83-480 SEC 202	VOL. I
PURCHASED BY BID	PL 83-480 SEC 115	VOL. I

			PAGE
AGRICULTURAL COMMODITY SALES—CONTINUED			
PURPOSE OF	PL 83-480	SEC 2	VOL. I
REPORT TO CONGRESS	PL 83-480	SEC 408	VOL. I
REVOLVING FUND	PL 89-808	SEC 4(D)	VOL. I
SCIENCE AND TECHNOLOGY	PL 83-480	SEC 104(B)(3)	VOL. I
SECRETARY OF STATE	PL 83-480	SEC 406	VOL. I
SUSPENSION OF	PL 96-494	SEC 208	VOL. I
TRADE SUSPENSION RESERVE	PL 96-494	SEC 208	VOL. I
U.N. WORLD FOOD PROGRAM	PL 83-480	SEC 205	VOL. I
USE IN OBTAINING NATURAL RESOURCES	PL 96-494	SEC 210	VOL. I
AGRICULTURAL COMPETITIVENESS AND TRADE ACT OF 1988	PL 100-418	SEC 4001	VOL. I
AGRICULTURAL EXPORT CREDIT REVOLVING FUND	PL 89-808	SEC 4(D)	VOL. I
AGRICULTURAL PRODUCTION FINANCIAL INSTITUTIONS (INTERNATIONAL) AID FROM	PL 95-118	SEC 901	VOL. III
AGRICULTURAL PROGRAMS ADJUSTMENT ACT OF 1984	PL 98-258		VOL. I
AGRICULTURAL TRADE ACT OF 1978	PL 95-501		VOL. I
AGRICULTURAL TRADE AND EXPORT POLICY COMMISSION ACT	PL 97-98	SEC 1217	VOL. I
AGRICULTURAL TRADE AND FOOD AID, SPECIAL ASSISTANT FOR	PL 99-198	SEC 1113	VOL. I
AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954	PL 83-480		VOL. I
AGRICULTURAL TRADE OFFICERS	PL 95-501	SEC 401	VOL. I
AGRICULTURAL TRADE SUSPENSION ADJUSTMENT ACT OF 1980	PL 96-494	SEC 201	VOL. I
AGRICULTURE			
AGRICULTURAL TRADE AND EXPORT POLICY, NATIONAL COMMISSION ON	PL 97-98	SEC 1220	VOL. I
ASSISTANCE TO FOREIGN COUNTRIES	PL 100-202	SEC 101(D)	VOL. I
ASSISTANCE TO POOR COUNTRIES	H RES 1399		VOL. III
COMMODITIES EXPORT CONTROLS ON	PL 96-72	SEC 7(G)	VOL. III
EXPORTS FOREIGN EXCHANGE RISKS	PL 99-198	SEC 1134	VOL. I
FOOD RESERVES	PL 83-480	SEC 412	VOL. I
INTERNATIONAL COOPERATION	PL 99-198	SEC 1402	VOL. I
INTERNATIONAL FERTILIZER DEVELOPMENT CENTER U.S. PARTICIAPTION	PL 87-195	SEC 301(F)	VOL. I
RESEARCH	PL 87-195	SEC 103A	VOL. I
INTERNATIONAL COOPERATION	PL 87-195	SEC 297	VOL. I
TRADE CONSULTATIONS WITH OTHER COUNTRIES	PL 99-198	SEC 1123	VOL. I
AGRICULTURE AND FOOD ACT OF 1981	PL 97-98		VOL. I
AGRICULTURE, DEPARTMENT OF ATTACHE REPORTS	PL 99-198	SEC 1132	VOL. I
UNDER SECRETARY FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS	PL 95-501	SEC 501	VOL. I
AGRICULTURE, SECRETARY OF (SEE ALSO AGRICULTURAL COMMODITY SALES)			
PL 486 ADMINISTRATION OF	EO 12220	SEC 1-1	VOL. I
AID			
AGRICULTURAL DEVELOPMENTAL ASSISTANCE APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
AUDITING OPIC	PL 87-195	SEC 239	VOL. I
CONTINUATION WITHIN IDCA	EO 12163	SEC 1-103	VOL. I
DEVELOPMENT ASSISTANCE APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
DRUG EDUCATION PROGRAMS AUTHORIZATIONS OF APPROPRIATIONS	PL 99-570	SEC 2028	VOL. I
EDUCATION AND HUMAN RESOURCES DEVELOPMENTAL ASSISTANCE APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
EXPORT-IMPORT BANK TIED AID CREDIT PROGRAM	PL 98-181	SEC 641-647	VOL. III
HEALTH DEVELOPMENTAL ASSISTANCE APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
INSPECTOR GENERAL SECURITY ACTIVITIES	PL 95-452	SEC 8A	592
INTERNATIONAL PRIVATE			

		PAGE
AID--CONTINUED		
INVESTMENT ADVISORY COUNCIL ON FOREIGN AID---	PL 87-195 SEC 601(C)	VOL. I
OFFICE OF INSPECTOR GENERAL APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
OPERATING EXPENSES APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
OPIC MANAGEMENT-----------	PL 87-195 SEC 233(B)	VOL. I
PERSONNEL UNIFIED SYSTEM--------	PL 95-424 SEC 401	VOL. I
POPULATION DEVELOPMENTAL ASSISTANCE APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
TIED AID CREDIT PROGRAM ESTABLISHMENT OF------	PL 98-181 SEC 641-647	VOL. III
TRANSFER OF FUNCTIONS TO OPIC----------	EO 11579 SEC 4	VOL. I
VITAMIN A DEFICIENCY PROGRAM APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
AIDS		
DEVELOPING COUNTRIES RESEARCH, TREATMENT, AND CONTROL OF------	PL 100-461 SEC 545	VOL. I
AIR CARRIERS		
FOREIGN----------	PL 95-426 SEC 706	VOL. II
SUSPENSION OF FLIGHTS TO AND FROM LEBANON-------	50 FR 31835	407
SUSPENSION OF FLIGHTS TO AND FROM SOUTH AFRICA----	PL 99-440 TITLE III	VOL. III
AIRCRAFT		
AWACS FOREIGN MILITARY SALES	PL 99-83 SEC 131	VOL. I
B-1B BOMBER PROGRAM SENSE OF CONGRESS-----	PL 99-145 SEC 1425	VOL. I
OA-37 DRAGONFLY FOREIGN MILITARY SALES	PL 98-525 SEC 113	VOL. I
PIRACY----------	PL 93-366 SEC 103	402
SECURITY STANDARDS----------	PL 93-366 SEC 106	405
STRATEGIC BOMBER PROGRAMS SENSE OF CONGRESS------	PL 99-145 SEC 1425	VOL. I
SUSPENSION OF AIR SERVICE--	PL 93-366 SEC 106	405
AIRPORTS		
FOREIGN AIRPORT SECURITY----	PL 99-83 SEC 551	VOL. I
EXPLOSIVE DETECTION TECHNIQUES----------	PL 99-83 SEC 557	VOL. I
ALASKA NATIVES		
KILLING ENDANGERED SPECIES-	PL 93-205 SEC 10(E)	207
ALASKAN PIPELINE		
NEGOTIATIONS WITH CANADA----	PL 93-153 SEC 301	345
ALBERT SCHWEITZER HOSPITAL		
U.S. GRANTS TO----------	PL 93-189 SEC 33	VOL. I
ALCOHOL (FUEL)		
USE OF PROTEIN BYPRODUCTS FROM----------	PL 97-98 SEC 1208	VOL. I
ALIEN EMPLOYEES		
FOREIGN AID PROGRAM-------	PL 87-195 SEC 635	VOL. I
ALLEGIANCE		
(SEE LOYALTY)		
ALLIANCE FOR PROGRESS		
FOREIGN MILITARY BUDGETS----	PL 87-195 SEC 620(S)	VOL. I
AMB TREATY		
REVIEW OF		
SENSE OF CONGRESS------	PL 100-456 SEC 904	VOL. II
AMBASSADORS		
(SEE ALSO CHIEF OF MISSION)		
(SEE ALSO FOREIGN MINISTERS)		
QUALIFICATIONS----------	PL 84-885 SEC 18	VOL. II
U.S. REPRESENTATIVE TO U.N.	PL 79-264 SEC 2	VOL. II
AMERICAN AID TO POLAND ACT OF 1988----------	PL 100-418	VOL. I
AMERICAN INSTITUTE IN TAIWAN		
APPROPRIATIONS, 1989-------	PL 100-459 TITLE III	VOL. II
AMERICAN INSTITUTE OF TAIWAN----	PL 96-8 SEC 6	VOL. II
EMPLOYMENT OF U.S. PERSONNEL----------	PL 96-8 SEC 11	VOL. II
SERVICES TO U.S. CITIZENS---	PL 96-8 SEC 7	VOL. II
TAX EXEMPT STATUS----------	PL 96-8 SEC 8	VOL. II
AMERICAN OVERSEAS SCHOOLS PROGRAM----------	PL 87-256 SEC 112(A)(5)	VOL. II
AMERICAN SCHOOLS AND HOSPITALS ABROAD		
APPROPRIATIONS, 1989-------	PL 100-461 TITLE II	VOL. I
AMERICAN STUDIES PROGRAM-------	PL 87-256 SEC 112(A)(6)	VOL. II
AMERICAN-AUSTRALIAN BICENTENNIAL FOUNDATION		
GRANT TO----------	PL 99-93 SEC 106	VOL. II
ANGLO-IRISH AGREEMENT		

			PAGE
ANGLO-IRISH AGREEMENT--CONTINUED			
INTERNATIONAL FUND			
U.S. CONTRIBUTIONS TO	PL 99-415	SEC 3	VOL. I
U.S. CONTRIBUTIONS IN			
SUPPORT OF			
REPORT TO CONGRESS	PL 99-415	SEC 6	VOL. I
ANGLO-IRISH AGREEMENT SUPPORT ACT OF 1986	PL 99-415		VOL. I
ANGOLA			
CONFLICT IN			
U.S. POLICY TOWARD	PL 100-204	SEC 1222	VOL. II
ANGOLA-U.S. RELATIONS			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
	PL 79-173	SEC 2(B)(11)	VOL. III
POLICY TOWARD U.S. BUSINESS TRANSACTIONS IN	PL 99-472	SEC 21	VOL. III
ANGOLA-U.S.S.R. RELATIONS	PL 94-329	SEC 405	VOL. I
ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984	PL 98-623	TITLE III	229
ANTI-DRUG ABUSE ACT OF 1988	PL 100-690	TITLE IV	VOL. I
ANTI-TERRORISM ACT OF 1987	PL 100-204	TITLE X	VOL. II
ANTIDUMPING	PL 71-361	SEC 516A	VOL. III
APPRAISALS OF VALUE	PL 71-361	SEC 516A	VOL. III
IMPORTS AFFECTED	PL 93-618	SEC 201	VOL. III
ORDERS AGAINST			
PREVENTING			
CIRCUMVENTION	PL 71-361	SEC 781	VOL. III
PETITION BY DOMESTIC INDUSTRY	PL 100-418	SEC 1317	VOL. III
ANTIDUMPING DUTIES			
CONDITIONAL PAYMENT OF	PL 71-361	SEC 738	VOL. III
DETERMINATION			
FINAL	PL 71-361	SEC 735	VOL. III
PRELIMINARY	PL 71-361	SEC 733	VOL. III
IMPOSITION OF	PL 71-361	SEC 731	VOL. III
INVESTIGATION			
INITIATION OF	PL 71-361	SEC 732	VOL. III
TERMINATION OF	PL 71-361	SEC 734	VOL. III
ORDERS PUBLISHED	PL 71-361	SEC 736	VOL. III
REVIEW OF	PL 71-361	SEC 751	VOL. III
ANTIHIJACKING ACT OF 1974	PL 93-366		401
ANTISATELLITE WEAPONS			
TESTING			
MORATORIUM ON	PL 100-180	SEC 208	VOL. I
ANTISATELLITE WEAPONS PROGRAM			
CANCELLATION OF	PL 100-456	SEC 216	VOL. I
APARTHEID			
ENDING IN SOUTH AFRICA	PL 99-93	SEC 211(C)	VOL. II
IMF			
CONGRESSIONAL INSTRUCTIONS	PL 79-171	SEC 43(B)	VOL. III
INTERNATIONAL EFFORTS TO UNDERMINE	PL 99-440	TITLE IV	VOL. III
PROGRESS TOWARDS ENDING SYSTEM			
REPORTS TO CONGRESS	PL 99-440	TITLE V	VOL. III
U.S. EFFORTS TO UNDERMINE	PL 99-440	TITLE III	VOL. III
U.S. POLICY TOWARD	PL 99-83	SEC 803	VOL. I
U.S. POLICY TOWARD ENDING	PL 99-440	TITLE I	VOL. III
VICTIMS OF			
MEASURES TO ASSIST	PL 99-440	TITLE II	VOL. III
APPROPRIATION: RESCISSION	PL 100-251		VOL. I
APPROPRIATIONS			
EXAMINATION OF ESTIMATES IN THE FIELD	PL 83-207	SEC 1108	436
VALID OBLIGATIONS	31 USC 1108		VOL. I
APTHEKER V. SECRETARY OF STATE			
PASSPORTS			
COMMUNIST ORGANIZATIONS	64 STAT 987		VOL. II
ARAB-ISRAELI CONFLICT			
(SEE MIDDLE EAST)			
ARBITRAL AWARDS			
FULL FAITH AND CREDIT OF	PL 89-532	SEC 3	VOL. III
ARBITRATION			
INTERPARLIAMENTARY UNION	PL 74-170	SEC 1	437
INVESTMENT DISPUTES			
OPIC	PL 87-195	SEC 237	VOL. I
NATIONALIZATIONS	PL 87-195	SEC 620(E)(1)	VOL. I
ARBITRATORS			
(SEE ARBITRATION)			
ARCHAEOLOGICAL MATERIAL			
CONVENTION ON	PL 97-446		VOL. II
ARCTIC RESEARCH AND POLICY ACT OF 1984	PL 98-373		417
ARCTIC RESEARCH COMMISSION	PL 98-373	SEC 103	419
	EO 12501		425
ARGENTINA-U.S. RELATIONS			

			PAGE
ARGENTINA-U.S. RELATIONS—CONTINUED			
NUCLEAR MATERIALS			
EXPORT OF	PL 98-164	SEC 1007	VOL. II
U.S. AID AND SALES			
CONDITIONS ON	PL 97-113	SEC 725	VOL. I
ARMED FORCES			
(SEE MILITARY)			
ARMED FORCES APPROPRIATION			
AUTHORIZATION, 1971	PL 91-441		VOL. I
ARMS			
CHEMICAL AND BIOLOGICAL			
TRANSPORT OF	PL 91-672	SEC 13	VOL. I
ARMS CONTROL			
(SEE ALSO ACDA)			
AGREEMENTS			
U.S. COMPLIANCE WITH	PL 87-297	SEC 52	VOL. II
U.S. SUPPORT OF	PL 98-525	SEC 1110	VOL. II
VERIFICATION OF	PL 87-297	SEC 37	VOL. II
CHEMICAL AND BIOLOGICAL			
WEAPONS PROGRAMS			
VERIFICATION	PL 98-525	SEC 1109	VOL. II
COMPLIANCE ISSUES			
STANDING CONSULTATIVE			
COMMISSION	PL 100-213	SEC 3	VOL. II
COMPLIANCE WITH EXISTING			
AGREEMENTS			
SENSE OF CONGRESS	PL 99-145	SEC 1001	VOL. II
CONGRESSIONAL FINDINGS	PL 100-180	SEC 904	VOL. II
CONVENTIONAL ARMS TRANSFERS			
NEGOTIATIONS TO LIMIT	PL 99-83	SEC 129	VOL. I
REPORT TO CONGRESS	PL 99-83	SEC 129	VOL. I
CONVENTIONAL WEAPONS			
DEVELOPING NATIONS	PL 93-559	SEC 51	VOL. I
DEFINED	PL 87-297	SEC 3	VOL. II
DISARMAMENT AS			
CONGRESSIONAL GOAL	PL 93-126	SEC 16	VOL. II
LESS DEVELOPED COUNTRIES			
LIMITING CONVENTIONAL			
ARMS	PL 99-83	SEC 129	VOL. I
LETHAL PRODUCTS			
REVIEW OF	PL 95-92	SEC 27	VOL. I
MILITARY CONSEQUENCES OF			
REPORT TO CONGRESS	PL 100-180	SEC 905	VOL. II
MISSILE TECHNOLOGY CONTROL			
REGIME	PL 100-180	SEC 901	VOL. II
NEGOTIATOR (U.S.)	PL 87-297	SEC 27	VOL. II
NUCLEAR RISK REDUCTION			
CENTERS			
CONGRESSIONAL SUPPORT			
FOR	PL 100-180	SEC 907	VOL. II
SENSE OF CONGRESS	PL 98-525	SEC 1108	VOL. II
SENSE OF CONGRESS IN			
SUPPORT OF	PL 99-661	SEC 1004	VOL. II
NUCLEAR TESTING			
SENSE OF CONGRESS	PL 99-661	SEC 1002	VOL. II
NUCLEAR WINTER			
REPORT TO CONGRESS	PL 98-525	SEC 1107	VOL. II
ON-SITE INSPECTIONS			
REPORT TO CONGRESS	PL 100-456	SEC 909	VOL. II
POLICY AND NEGOTIATIONS			
WEAPONS IMPACT ON	PL 87-297	SEC 36	VOL. II
SALT II CONTINUED			
COMPLIANCE WITH			
SENSE OF CONGRESS	PL 99-661	SEC 1001	VOL. II
SOVIET COMPLIANCE			
REPORT TO CONGRESS	PL 98-525	SEC 1106	VOL. II
SOVIET UNION COMPLIANCE			
REPORT TO CONGRESS	PL 100-180	SEC 903	VOL. II
	PL 99-145	SEC 1002	VOL. II
STANDING CONSULTATIVE			
COMMISSION			
REPORT TO CONGRESS	PL 87-297	SEC 38	VOL. II
SENSE OF CONGRESS	PL 100-213	SEC 3	VOL. II
START			
ALTERNATE U.S. POSTURE	PL 100-456	SEC 908	VOL. II
SENSE OF CONGRESS	PL 100-456	SEC 902	VOL. II
STRATEGIC DEFENSE PROGRAMS			
REPORT TO CONGRESS	PL 98-525	SEC 1101	VOL. II
TACTICAL NUCLEAR WARHEADS			
REDUCTION			
REPORT TO CONGRESS	PL 98-525	SEC 1104	VOL. II
TEST BAN TREATIES			
RATIFICATION OF	PL 98-525	SEC 1111	VOL. II
THEATER NUCLEAR WEAPONS			
REPORT TO CONGRESS	PL 98-525	SEC 1103	VOL. II
U.S. ARMS CONTROL			
NEGOTIATING TEAM			
CONSTRUCTING NEW			
BUILDING	PL 99-93	SEC 705	VOL. II

			PAGE
ARMS CONTROL=>CONTINUED			
U.S. COMPLIANCE WITH REPORT TO CONGRESS	PL 87-297	SEC 52	VOL. II
U.S. COUNTER FORCE CAPABILITY REPORT TO CONGRESS	PL 98-525	SEC 1105	VOL. II
U.S. FOREIGN POLICY GOALS	PL 90-629	SEC 1	VOL. I
U.S. NON-COMPLIANCE REPORT TO CONGRESS	PL 99-661	SEC 1003	VOL. II
U.S. POLICY SENSE OF CONGRESS	PL 100-456	SEC 903	VOL. II
U.S. POSITION REPORT TO CONGRESS	PL 100-180	SEC 906	VOL. II
U.S. STRATEGY REPORT TO CONGRESS	PL 100-456	SEC 906	VOL. II
VERIFICATION CAPABILITIES STUDY ON	PL 99-145	SEC 1003	VOL. II
VERIFICATION POLICY COORDINATION REPORT TO CONGRESS	PL 100-456	SEC 910	VOL. II
VISITING SCHOLAR PROGRAM	PL 87-297	SEC 28	VOL. II
ARMS CONTROL AND DISARMAMENT ACT	PL 87-297		VOL. II
ARMS CONTROL AND DISARMAMENT ACT AUTHORIZATION FOR FISCAL YEARS 1986 AND 1987	PL 99-93		VOL. II
ARMS CONTROL AND DISARMAMENT AGENCY (SEE ACDA)			
ARMS CONTROL AND DISARMAMENT AMENDMENTS ACT OF 1987	PL 100-213		VOL. II
ARMS CONTROL AND DISARMAMENT NEGOTIATIONS, SPECIAL REPRESENTATIVE FOR	PL 87-297	SEC 27	VOL. II
ARMS EXPORT CONTROL ACT	PL 90-629		VOL. I
ARMS EXPORT CONTROLS ADMINISTRATION OF	EO 11958		VOL. I
ARMS SALES (U.S.) ADMINISTRATION OF	EO 11958		VOL. I
EXPENSES	PL 90-629	SEC 43	VOL. I
AUTHORIZATION OF APPROPRIATIONS	PL 90-629	SEC 31	VOL. I
CASH SALES	PL 90-629	SEC 21-22	VOL. I
COMMERCIAL EXPORTS AGENT FEES	PL 90-629	SEC 39	VOL. I
ILLEGAL PAYMENTS	PL 94-329	SEC 607	VOL. I
ITEMS MANUFACTURED BY U.S. GOVERNMENT	PL 90-629	SEC 30	VOL. I
REPORTS TO CONGRESS	PL 90-629	SEC 36(C)	VOL. I
SUSPENSION	PL 90-629	SEC 42(E)	VOL. I
COPRODUCTION OUTSIDE U.S.	PL 90-629	SEC 42	VOL. I
COUNTERPART FUNDS	PL 87-195	SEC 609	VOL. I
COUNTRIES AIDING TERRORISTS PROHIBITION	PL 90-629	SEC 3(F)	VOL. I
CREDIT SALES	PL 90-629	SEC 23	VOL. I
CREDITS REPAYMENT	PL 96-92	SEC 17(B)	VOL. I
DECREMENT STOCK	10 USC 975		VOL. I
EGYPT	PL 99-83	SEC 101(D)	VOL. I
ELIGIBILITY OF FOREIGN COUNTRIES	PL 90-629	SEC 3	VOL. I
EXCESS DEFENSE ARTICLES MAXIMUM ACQUISITION COSTS	PL 90-629	SEC 31(D)	VOL. I
EXPORT-IMPORT BANK	PL 90-629	SEC 32	VOL. I
EXPORTING TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM PROHIBITED	PL 90-629	SEC 40	VOL. I
FOREIGN CURRENCIES SPECIAL ACCOUNT	PL 87-195	SEC 609	VOL. I
FOREIGN INTIMIDATION AND HARASSMENT	PL 90-629	SEC 6	VOL. I
FROM U.S. INVENTORIES READINESS IMPACT	10 USC 118		VOL. I
GRANTS APPROPRIATIONS, 1989	PL 100-461	TITLE III	VOL. I
GREECE	PL 99-83	SEC 101(E)	VOL. I
GUARANTEES TO U.S. BUSINESSES	PL 90-629	SEC 24	VOL. I
IMPACT ON U.S INDUSTRIAL BASE	PL 98-525	SEC 1522	VOL. I
IMPLEMENTATION OF	PL 91-672		VOL. I
ISRAEL	PL 91-672	SEC 5	VOL. I
	PL 99-83	SEC 101(C)	VOL. I
POLICY ON	PL 95-92	SEC 26	VOL. I
JORDAN	PL 99-83	SEC 130	VOL. I
LEASING AUTHORITY	PL 90-629	SEC 61	VOL. I
CONGRESSIONAL REVIEW	PL 90-629	SEC 63	VOL. I

			PAGE
ARMS SALES (U.S.)--CONTINUED			
REPORT TO CONGRESS	PL 90-629	SEC 62	VOL. I
LESS DEVELOPED COUNTRIES	PL 90-629	SEC 1	VOL. I
SOPHISTICATED WEAPONS	PL 90-629	SEC 4	VOL. I
LICENSED PRODUCTION OUTSIDE U.S.	PL 90-629	SEC 42	VOL. I
MILITARY CONSTRUCTION SERVICES	PL 90-629	SEC 29	VOL. I
NATO			
COOPERATIVE PROJECTS	PL 90-629	SEC 27	VOL. I
PERSONNEL	PL 90-629	SEC 42(F)	VOL. I
PROCUREMENT OUTSIDE U.S.	PL 90-629	SEC 42	VOL. I
PROHIBITION ON CERTAIN ARTICLES	10 USC 975		VOL. I
REGULATIONS	PL 90-629	SEC 38	VOL. I
REIMBURSEMENTS	PL 87-195	SEC 524	VOL. I
REPORT TO CONGRESS	PL 99-83	SEC 106	VOL. I
REPORTS TO CONGRESS	PL 90-629	SEC 25	VOL. I
SAUDI ARABIA	PL 99-83	SEC 131	VOL. I
SDAF	PL 90-629	SEC 51	VOL. I
SECRETARY OF STATE'S AUTHORITY	PL 90-629	SEC 2	VOL. I
SECURITY ASSISTANCE SURVEYS	PL 90-629	SEC 26	VOL. I
SOPHISTICATED WEAPONS	PL 90-629	SEC 3-4	VOL. I
TRANSFERS	PL 90-629	SEC 3(D)	VOL. I
TRANSPORTATION OF TO ALLIES COSTS	10 USC 2213		VOL. I
TURKEY	PL 99-83	SEC 101(F)	VOL. I
U.N. OBLIGATIONS	PL 90-629	SEC 4	VOL. I
UNAUTHORIZED USE OF	PL 90-629	SEC 3(C)	VOL. I
VESSELS			
TRANSFER OF	PL 97-342		VOL. I
WEAPONS MANUFACTURED IN ARMY ARSENAL			
SALES RESTRICTIONS	10 USC 2208		VOL. I
WORLDWIDE	PL 91-672	SEC 6	VOL. I
ARMS SALES			
INTERNATIONAL CONTROLS ON	PL 90-629	SEC 1	VOL. I
SOUTH AFRICA			
EMBARGO VIOLATIONS	PL 99-440	TITLE V	VOL. III
TRAINING AND RELATED SUPPORT			
EXCHANGE OF	PL 90-629	SEC 30A	VOL. I
ARMS TRANSFERS			
BY INTELLIGENCE AGENCIES			
REPORT TO CONGRESS	PL 99-569	SEC 602	VOL. I
ART			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
ARTS AMERICA PROGRAM	PL 87-256	SEC 112(A)(9)	VOL. II
ARTS, ADVISORY COMMITTEE ON	PL 87-256	SEC 106	VOL. II
ASIA			
AMERASIAN CHILDREN			
REPORT TO CONGRESS	PL 99-83	SEC 903	VOL. I
ASIA FOUNDATION			
APPROPRIATIONS, 1989	PL 100-459	TITLE III	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1986-87	PL 98-164	SEC 404	VOL. II
CONGRESSIONAL FINDINGS	PL 98-164	SEC 402	VOL. II
U.S. CONTRIBUTION, 1982-83	PL 97-241	SEC 111	VOL. II
U.S. GRANT TO	PL 98-164	SEC 403	VOL. II
ASIA FOUNDATION ACT	PL 98-164	SEC 401	VOL. II
ASIAN DEVELOPMENT BANK			
(SEE ADB)			
ASIAN DEVELOPMENT FUND			
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
U.S. CONTRIBUTION TO	PL 89-369	SEC 24	VOL. III
ASIAN-PACIFIC REGIONAL HUMAN RIGHTS CONVENTION			
REPORT TO CONGRESS	PL 100-204	SEC 747	VOL. II
ASTRONAUTS			
(SEE OUTER SPACE)			
ATLANTIC SALMON CONVENTION ACT OF 1982	PL 97-389	TITLE III	161
ATLANTIC TUNAS CONVENTION ACT OF 1975			
(SEE ALSO FISHERIES, TUNA)	PL 94-70		124
APPROPRIATION AUTHORIZATION	PL 94-70	SEC 10	133
ATOMIC ENERGY			
(SEE ALSO IAEA)			
(SEE ALSO NUCLEAR WEAPONS)			
BERLIN-U.S. COOPERATION	PL 83-703	SEC 125	273
BYPRODUCT MATERIAL			
DISTRIBUTION	PL 83-703	SEC 81-84	258
DEFINED	PL 83-703	SEC 11(C)	245
EURATOM			
U.S. APPROVAL	S CON RES 85-116		304
U.S. LIABILITY	PL 85-846	SEC 7	303
U.S. PURCHASE FROM	PL 85-846	SEC 6	302
U.S. SALE TO	PL 85-846	SEC 5	301

			PAGE
ATOMIC ENERGY--CONTINUED			
EUROPEAN-U.S. COOPERATION--	PL 85-846		300
EXPORT LICENSING PROCEDURE-	PL 83-703	SEC 126	273
EXPORT OF			
CONGRESSIONAL REVIEW--	PL 83-703	SEC 130	281
CRITERIA	PL 83-703	SEC 127-128	277
REQUIREMENTS	PL 95-242	SEC 402	321
TERMINATION	PL 83-703	SEC 129	280
FINDINGS OF CONGRESS	PL 83-703	SEC 2	244
IAEA	PL 85-177	SEC 3	307
INDIA			
EXPORTING NUCLEAR MATERIALS TO	EO 12055		333
INFORMATION CONTROL	PL 83-703	SEC 141-145	289
INFORMATION FOR CONGRESS	PL 83-703	SEC 303	299
INTERNATIONAL ARRANGEMENT DEFINED	PL 83-703	SEC 11(N)	247
INTERNATIONAL ATOMIC POOL	PL 83-703	SEC 124	273
INTERNATIONAL COOPERATION	PL 83-703	SEC 123	268
	EO 10841		312
	PL 95-242	SEC 404	324
INFORMATION EXCHANGE	PL 83-703	SEC 144	291
LICENSE ISSUANCE	PL 83-703	SEC 102-103	264
LICENSE REQUIRED	PL 83-703	SEC 101	264
MEDICAL THERAPY	PL 83-703	SEC 104	256
MILITARY APPLICATION	PL 83-703	SEC 91-92	263
NON-MILITARY APPLICATION INTERNATIONAL COOPERATION	PL 83-703	SEC 124	273
NRC			
LICENSING	PL 83-703	SEC 111	267
NUCLEAR FUEL SUPPLY	PL 95-242	SEC 101-105	316
INTERNATIONAL COOPERATION	PL 95-242	SEC 104	317
NUCLEAR INCIDENT DEFINED	PL 83-703	SEC 11(Q)	247
PEACEFUL USES OF	PL 95-242	SEC 403	322
RESTRICTED DATA	PL 83-703	SEC 141-145	289
CIA TRANSMISSION OF	EO 10899		311
DEFINED	PL 83-703	SEC 11(Y)	249
RESTRICTIONS ON	PL 83-703	SEC 145	292
STATE DEPARTMENT TRANSMISSION OF	EO 11057		310
SOURCE MATERIAL			
DEFINED	PL 83-703	SEC 11(Z)	249
FOREIGN DISTRIBUTION	PL 83-703	SEC 64	257
REPORTS TO CONGRESS	PL 83-703	SEC 61	257
TRANSFER OF	PL 83-703	SEC 62	257
SPECIAL NUCLEAR MATERIAL	PL 83-703	SEC 51	251
ACQUISITION OF	PL 83-703	SEC 55	253
DEFINED	PL 83-703	SEC 11(AA)	249
FOREIGN DISTRIBUTION OF	PL 83-703	SEC 54	251
PROHIBITIONS	PL 83-703	SEC 57	254
REPORTS TO CONGRESS	PL 83-703	SEC 58	256
SUBSEQUENT ARRANGEMENTS	PL 83-703	SEC 131	284
U.S. POLICY DECLARATION	PL 83-703	SEC 1	243
ATOMIC ENERGY ACT OF 1954	PL 83-703		243
PURPOSE OF ACT	PL 83-703	SEC 3	244
ATTORNEY GENERAL			
AGENTS OF FOREIGN GOVERNMENTS	18 USC 951		540
CRIMINAL VIOLATIONS			
REPORTS FROM INSPECTOR GENERAL	PL 95-452	SEC 4	583
DOMESTIC CORRUPT PRACTICES			
CIVIL ACTIONS	PL 95-213	SEC 104	VOL. III
FOREIGN AGENTS REGISTRATION	PL 75-583	SEC 2	527
AUTOMOTIVE PARTS (U.S.)			
EXPORTS TO JAPAN	PL 100-418	SEC 1934	VOL. III
SALES TO JAPAN	PL 100-418	SEC 2123	VOL. III
SPECIAL ADVISORY COMMITTEE	PL 100-418	SEC 2123	VOL. III
AWACS			
SAUDI ARABIA			
PRESIDENTIAL CERTIFICATION	PL 99-83	SEC 131	VOL. I
AWARDS			
(SEE ARBITRAL AWARDS)			

B

BALANCE OF PAYMENTS			
FOREIGN AID			
PROCUREMENT ABROAD	PL 87-195	SEC 604	VOL. I
GATT	PL 93-618	SEC 122	VOL. III
OPIC GUARANTEES	PL 87-195	SEC 237	VOL. I
RESERVED FOREIGN CURRENCIES AVAILABLE	31 USC 5303		VOL. I

			PAGE
BALLISTIC MISSILES			
ELIMINATION OF			
REPORT TO CONGRESS	PL 100-180	SEC 905	VOL. II
BALTIC FREEDOM DAY -			
PROCLAMATION	PL 100-343		625
BANGLADESH DISASTER ASSISTANCE			
ACT OF 1988	PL 100-576		VOL. I
BANK EXPORT SERVICES ACT	PL 97-290	SEC 201	VOL. III
BANKS			
(SEE ALSO ADB)			
(SEE ALSO IADB)			
(SEE ALSO MDBS)			
(SEE ALSO WORLD BANK)			
IMF BAILOUT OF	PL 79-171	SEC 46	VOL. III
INTERNATIONAL LENDING			
INFORMATION ON	PL 79-171	SEC 42	VOL. III
INTERNATIONAL LENDING			
SUPERVISION	PL 98-181	SEC 901-913	VOL. III
INTERNATIONAL SYSTEM			
CONFERENCE ON	PL 98-181	SEC 1102	VOL. III
BASIC HUMAN NEEDS			
IMF POLICY	PL 79-171	SEC 33	VOL. III
BATTLE ACT			
(SEE EXPORT ADMINISTRATION ACT OF 1979)			
BEIRUT AGREEMENT OF 1949			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE, IMPORTING MATERIAL)			
BERLIN			
(SEE ALSO GERMANY-U.S. RELATIONS)			
ACCESS TO	H CON RES 87-570		VOL. II
BERLIN RESOLUTION	H CON RES 87-570		VOL. II
BIGEYE BINARY CHEMICAL BOMB			
PRODUCTION OF	PL 100-456	SEC 116	VOL. I
BINARY CHEMICAL MUNITIONS			
PROHIBITION ON PROCUREMENT	PL 98-525	SEC 111	VOL. I
BOARD FOR INTERNATIONAL BROADCASTING			
(SEE ALSO RADIO FREE EUOPE AND RADIO LIBERTY)			
APPROPRIATIONS, 1988	PL 100-202	TITLE V	VOL. II
APPROPRIATIONS, 1989	PL 100-459	TITLE V	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1988-1989	PL 100-204	TITLE V	VOL. II
TASK FORCE ON BROADCASTING TO SOVIET JEWRY	PL 99-93	SEC 306	VOL. II
BOARD FOR INTERNATIONAL BROADCASTING ACT OF 1973			
(SEE RADIO FREE EUROPE AND RADIO LIBERTY)			
BOARD FOR INTERNATIONAL BROADCASTING AUTHORIZATION ACT, FY 1984 AND 1985	PL 98-164	SEC 301	VOL. II
BOARD FOR INTERNATIONAL BROADCASTING AUTHORIZATION ACT, FY 1986 AND 1987	PL 99-93	SEC 304	VOL. II
BOARD OF FOREIGN SCHOLARSHIPS	EO 11034	SEC 7	VOL. II
	PL 87-256	SEC 106	VOL. II
BOLIVIA-U.S. RELATIONS			
FOREIGN AID			
CONDITIONS FOR	PL 99-83	SEC 611	VOL. I
BOOKS, PUBLICATIONS AND DOCUMENTS			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE, IMPORTING MATERIALS			
BORROWING			
(SEE RESPECTIVE MDBS)			
BOYCOTTS (FOREIGN)			
U.S. PERSON PARTICIPATION IN	PL 96-72	SEC 8	VOL. III
BRAIN DRAIN			
(SEE EDUCATION)			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
(SEE SCIENCE AND TECHNOLOGY)			
BRAZIL-U.S. RELATIONS			
EX-IM BANK SPECIAL FACILITY	PL 79-173	SEC 13	VOL. III
BRETTON WOODS AGREEMENTS ACT	PL 79-171		VOL. III
CAPITAL STOCK	PL 79-171	SEC 16	VOL. III
COURTS			
JURISDICTION	PL 79-171	SEC 10	VOL. III
VENUE	PL 79-171	SEC 10	VOL. III
DEFAULT OF FOREIGN GOVERNMENTS	PL 79-171	SEC 9	VOL. III
GOLD RESERVE ACT FUND	PL 79-171	SEC 18	VOL. III
INFORMATION FURNISHED	PL 79-171	SEC 8	VOL. III

			PAGE
BRETTON WOODS AGREEMENTS ACT--CONTINUED			
INTERNATIONAL FINANCE CORPORATION			
WORLD BANK	PL 79-171	SEC 21	VOL. III
INTERPRETATION OF IMF ARTICLES	PL 79-171	SEC 13	VOL. III
LIMITATIONS ON PRESIDENT	PL 79-171	SEC 5	VOL. III
LOAN STABILIZATION	PL 79-171	SEC 12	VOL. III
LOANS TO IMF	PL 79-171	SEC 17	VOL. III
MEMBER BANKS	PL 79-171	SEC 6	VOL. III
POLICY OF UNITED STATES	PL 79-171	SEC 14	VOL. III
PRIVILEGES AND IMMUNITIES	PL 79-171	SEC 11	VOL. III
SECURITIES	PL 79-171	SEC 15	VOL. III
SUBSCRIPTIONS PAYMENT OF	PL 79-171	SEC 7	VOL. III
U.S. MEMBERSHIPS IN FINANCIAL INSTITUTIONS AUTHORIZED	PL 79-171	SEC 2	VOL. III
BRETTON WOODS AGREEMENTS ACT AMENDMENTS, 1978	PL 95-435		VOL. III
BRETTON WOODS AGREEMENTS ACT AMENDMENTS, 1980	PL 96-389		VOL. III
BRITISH-U.S. RELATIONS PARLIAMENTARY GROUP	PL 98-164	SEC 109(B)	VOL. II
BROADCASTING (SEE ALSO CUBA, BROADCASTING TO) (SEE ALSO RADIO FREE EUROPE AND RADIO LIBERTY) APPROPRIATIONS AUTHORIZATION	PL 93-129	SEC 8	VOL. II
BUILDINGS (ABROAD) (SEE FOREIGN SERVICE BUILDINGS)			
BULGARIA-U.S. RELATIONS CLAIMS			
LIQUIDATION OF PROPERTY	PL 81-455	SEC [illegible]-216	461
CLAIMS AGAINST	PL 81-455	SEC [illegible]-318	471
BURDEN SHARING DISCUSSIONS WITH MUTUAL DEFENSE ALLIANCES	PL 100-456	SEC 1008	VOL. I
BUREAU OF DIPLOMATIC SECURITY DIPLOMATIC SECURITY SERVICE	PL 99-399	SEC 201	VOL. II
BUREAU OF INTERNATIONAL NARCOTICS MATTERS	PL 99-93	SEC 131	VOL. II
BURUNDI FOREIGN AID NOTIFICATION REQUIREMENTS	PL 100-461	SEC 543	VOL. I
C			
CAMARENA SALAZAR, ENRIQUE	PL 99-93	SEC 134(C)	VOL. II
CAMBODIA MILITARY AID (U.S.) FOREIGN AID LIMITATIONS	PL 100-461	SEC 581	VOL. I
RESTORATION OF RESOLUTION ON	PL 100-502		636
RIGHT TO SELF DETERMINATION SENSE OF CONGRESS	PL 100-204	SEC 1244	VOL. II
CAMBODIA-U.S. RELATIONS (SEE ALSO INDOCHINA WAR)			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
	PL 95-424	SEC 602	VOL. I
DEFENSE COMMITMENT OF U.S.	PL 91-652	SEC 7	VOL. I
DISASTER RELIEF ASSISTANCE	PL 87-195	SEC 495H	VOL. I
FOREIGN AID	PL 99-83	SEC 905	VOL. I
PROHIBITED	PL 96-533	SEC 717	VOL. I
HUMAN RIGHTS	PL 95-426	SEC 610	VOL. II
KHMER ROUGE FOREIGN AID PROHIBITION	PL 99-83	SEC 905	VOL. I
CAMP DAVID ACCORDS CONTINUED PARTICIPATION OF EGYPT AND ISRAEL	PL 100-461	TITLE II	VOL. I
CANADA-U.S. RELATIONS (SEE ALSO INTERNATIONAL JOINT COMMISSION)			
ACID RAIN	PL 98-164	SEC 1008	VOL. II
AIRPORTS	PL 94-329	SEC 608	VOL. I
ALASKAN PIPELINE	PL 93-153	SEC 301	345
CANADIAN SUBSIDY PROGRAMS U.S. NEGOTIATING AUTHORITY	PL 100-449	SEC 409	VOL. III
COUNTERVAILING DUTIES REVIEW OF	PL 100-449	SEC 408	VOL. III
DEEPWATER PORTS	PL 93-627	SEC 22	104
ENVIRONMENT	PL 95-426	SEC 612	VOL. II

		PAGE
CANADA-U.S. RELATIONS--CONTINUED		
HOG AND PORK IMPORTS	PL 98-573 SEC 250	VOL. III
INTERPARLIAMENTARY GROUP	PL 86-42	441
LIVESTOCK IMPORTS	PL 99-83 SEC 721	VOL. I
RECIPROCAL FISHERIES AGREEMENT	PL 95-6 SEC 5	37
SAINT LAWRENCE SEAWAY TOLL	PL 95-105 SEC 110	VOL. II
TARIFFS AGRICULTURAL PRODUCTS	PL 100-449 SEC 301	VOL. III
TIMBER IMPORTS	PL 99-83 SEC 721	VOL. I
TRADE FREE TRADE ZONE	PL 93-618 SEC 612	VOL. III
TRADE AGREEMENTS	PL 93-618 SEC 126	VOL. III
CAPITAL SOCIAL PROGRESS TRUST FUND TRANSFERS FROM	PL 93-189 SEC 36	VOL. I
CAPITAL FLOWS SIGNIFICANCE TO U.S.	31 USC 5315	VOL. III
CAPITAL STOCK BRETTON WOODS AGREEMENTS ACT	PL 79-171 SEC 16	VOL. III
IDA PAYMENT OF SUBSCRIPTIONS	PL 86-565 SEC 7	VOL. III
IFC PAYMENT OF SUBSCRIPTIONS	PL 84-350 SEC 7	VOL. III
CARIBBEAN (EASTERN) FOREIGN AID REPORT TO CONGRESS	PL 96-533 SEC 313	VOL. I
CARIBBEAN INTERNATIONAL ADVISORY COMMISSION FOR THE CARIBBEAN REGION	PL 99-83 SEC 714	VOL. I
CARIBBEAN BASIN ECONOMIC RECOVERY ACT	PL 98-67	VOL. III
DESIGNATED BENEFICIARY COUNTRIES UNDER	19 USC 1202	VOL. III
CARIBBEAN BASIN INITIATIVE (SEE CBI)		
CARIBBEAN COMMUNITY AND COMMON MARKET (CARICOM) U.S. RECOGNITION OF	PL 100-204 SEC 746	VOL. II
CARIBBEAN DEVELOPMENT BANK	PL 96-533 SEC 315	VOL. I
PUERTO RICAN MEMBERSHIP	PL 93-559 SEC 52	VOL. I
CARIBBEAN HURRICANE RELIEF ASSISTANCE	PL 87-195 SEC 495G	VOL. I
CASE ACT	PL 92-403	VOL. II
CASE-ZABLOCKI ACT INTERNATIONAL AGREEMENTS TRANSMITTAL OF TEXT TO CONGRESS	PL 100-204 SEC 139	VOL. II
CBI IMPLEMENTATION OF	48 FR 54453	VOL. III
INTERNATIONAL TRADE COMMISSION REPORT TO CONGRESS	PL 98-67 SEC 215	VOL. III
LABOR IMPACT STUDY ON	PL 98-67 SEC 216	VOL. III
PUERTO RICO AND U.S. INSULAR POSSESSIONS	PL 98-67 SEC 214	VOL. III
SUGAR IMPORTS	PL 98-67 SEC 231	VOL. III
TAX PROVISIONS	PL 98-67 SEC 223	VOL. III
TRADE SENSE OF CONGRESS	PL 100-418 SEC 1909	VOL. III
TRADE INITIATIVES	PL 98-67 SEC 211-218	VOL. III
ELIGIBLE ARTICLES	PL 98-67 SEC 213	VOL. III
ELIGIBLE COUNTRIES	PL 98-67 SEC 212	VOL. III
CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST (SEE EAST-WEST CENTER)		
CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST ACT OF 1960	PL 86-472 SEC 701	VOL. II
CENTRAL AMERICA AIRCRAFT USE RESTRICTIONS NOTIFICATION REGARDING	PL 100-461 SEC 533	VOL. I
ASSISTANCE TO DELEGATION OF AUTHORITY TO IMPLEMENT	EO 12570	VOL. I
CONFLICT RESOLUTION REPORT TO CONGRESS	PL 99-591 SEC 214	VOL. I
ECONOMIC DEVELOPMENT, PEACE AND STABILITY PROMOTION OF	PL 99-591 SEC 201	VOL. I
FOREIGN AID U.S. POLICY ON	PL 100-463 SEC 9008	VOL. I

		PAGE
CENTRAL AMERICA--CONTINUED		
PEACE PROCESS		
ADDITIONAL AID	PL 99-88 SEC 105	VOL. I
HUMANITARIAN AID		
SUPPORTING	PL 100-120 SEC 101(A)	VOL. I
REQUESTS FOR		
ADDITIONAL AID	PL 99-83 SEC 722(K)	VOL. I
REFUGEE RELIEF	PL 87-195 SEC 495I	VOL. I
SAPOA AGREEMENT	PL 100-276	VOL. I
U.S. ARMED FORCES IN		
SENSE OF CONGRESS	PL 98-525 SEC 310	VOL. I
U.S. POLICY TOWARD	PL 99-591 SEC 202	VOL. I
CENTRAL AMERICA DEMOCRACY, PEACE, AND DEVELOPMENT INITIATIVE		
AUTHORIZATION OF		
APPROPRIATIONS	PL 87-195 SEC 465	VOL. I
PEACE IN CENTRAL AMERICA	PL 87-195 SEC 463	VOL. I
POLICY STATEMENT	PL 87-195 SEC 461	VOL. I
CENTRAL AMERICA PEACE ASSISTANCE	PL 100-276	VOL. I
CENTRAL AMERICAN DEMOCRACIES		
FOREIGN AID (U.S.)	PL 99-591 SEC 205	VOL. I
FUNDING ASSISTANCE TO		
REPORT TO CONGRESS	PL 99-591 SEC 206	VOL. I
CHEMICAL DEMILITARIZATION PROGRAM		
AUTHORIZATION	PL 100-456 SEC 105	VOL. I
CHEMICAL WARFARE		
CONDEMNATION OF	PL 97-113 SEC 716	VOL. I
HERBICIDES	EO 11850	VOL. II
CHEMICAL WARFARE REVIEW COMMISSION	PL 98-525 SEC 1511	VOL. I
CHEMICAL WEAPONS		
BINARY CHEMICAL MUNITIONS		
CONDITIONS FOR USE OF		
FUNDS	PL 99-145 SEC 1411	VOL. I
DEMILITARIZATION PROGRAM		
REVISION OF	PL 100-180 SEC 125	VOL. I
LETHAL AGENTS AND MUNITIONS		
DESTRUCTION OF	PL 100-180 SEC 107	VOL. I
POLICY ON BANNING	PL 99-93 SEC 707	VOL. II
PROHIBITION		
NEGOTIATIONS ON	PL 97-252 SEC 1124	VOL. I
PROHIBITION OF		
COMPLIANCE MONITORING		
PROGRAM	PL 100-456 SEC 208	VOL. I
TESTING		
REPORT TO CONGRESS	PL 99-145 SEC 1413	VOL. I
VERIFICATION PROGRAMS		
REPORT TO CONGRESS	PL 98-525 SEC 1109	VOL. II
CHIEFS OF DIPLOMATIC MISSION		
AUTHORITY	PL 90-629 SEC 2	VOL. I
FOREIGN AID	PL 87-195 SEC 622	VOL. I
SALARIES	PL 96-465 SEC 401	VOL. II
CHILD SURVIVAL ACTIVITIES		
AID		
REIMBURSEMENT OF		
EXPENSES	PL 100-461 SEC 545	VOL. I
CHILD SURVIVAL FUND		
APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
CHILDREN		
ABDUCTION OF		
CONVENTION ON CIVIL		
ASPECT OF	EO 12648	VOL. II
ASIA	PL 87-195 SEC 241	VOL. I
HEALTH OF		
SENSE OF CONGRESS ON	PL 98-198	VOL. II
HEALTH PROGRAMS		
IMMUNIZATIONS	PL 99-198 SEC 1112(B)	VOL. I
UNIVERSAL IMMUNIZATIONS	PL 100-461 SEC 541	VOL. I
CHILDREN'S MEDICAL RELIEF INTERNATIONAL		
FOREIGN AID	PL 87-195 SEC 214(D)	VOL. I
CHILE-U.S. RELATIONS		
FOREIGN AID		
RESTRICTION	PL 94-161 SEC 320	VOL. I
HUMAN RIGHTS	PL 93-189 SEC 35	VOL. I
MDB LOANS		
U.S. OPPOSITION	PL 100-461 SEC 547	VOL. I
RECONSTRUCTION OF	PL 86-735 SEC 3	VOL. I
U.S. AID AND SALES		
CONDITIONS ON	PL 97-113 SEC 726	VOL. I
CHINA (PEOPLE'S REPUBLIC OF)		
-U.S. RELATIONS		
CLAIMS		
PAYMENT OF	PL 81-455 SEC 9(F)	459
TRADE	EO 12167	VOL. III
CHINA (PEOPLE'S REPUBLIC		

		PAGE
OF)-U.S RELATIONS		
MARKET ORIENTATION STUDY OF	PL 100-418 SEC 1336	VOL. III
CHINA (PEOPLE'S REPUBLIC OF)-U.S. RELATIONS		
AGRICULTURAL ATTACHE	PL 94-141 SEC 106	VOL. II
AGRICULTURAL SALES	PL 95-501 SEC 202	VOL. I
CLAIMS	PL 81-455 SEC 501-513	485
EXPORTS AGRICULTURAL COMMODITIES	PL 99-198 SEC 1106	VOL. I
HUMAN RIGHTS POLICIES	PL 100-204 SEC 1245	VOL. II
HUMAN RIGHTS VIOLATION IN TIBET	PL 100-204 SEC 1243	VOL. II
OPIC	PL 87-195 SEC 239	VOL. I
YANG WEI SENSE OF CONGRESS	PL 100-204 SEC 907	VOL. II
CHINA (REPUBLIC OF) (SEE TAIWAN)		
CHINA-U.S. RELATIONS INCREASING TRADE	PL 99-93 SEC 807	VOL. II
CHURCHILL, SIR WINSTON NATIONAL WEEK OF RECOGNITION	PL 100-663	640
CIA	PL 87-195 SEC 662 EO 12333 SEC 1.8	VOL. I VOL. II
ATOMIC ENERGY RESTRICTED DATA TRANSMISSION	EO 10899	311
CITES (SEE ALSO CONVENTION ON THE INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLOR		
CITES IVORY CONTROL SYSTEM EFFECTIVENESS OF	PL 100-478 SEC 2304	397
CITIZENS ABROAD PROTECTION OF	15 STAT 224	VOL. II
CITIZENSHIP (U.S.) PROOF OF	PL 84-885 SEC 33	VOL. II
CIVIL SERVICE PEACE CORPS PERSONNEL APPOINTMENT TO	EO 11103	VOL. I
CIVILIAN CAREER SERVICE FORMER PEACE CORPS PERSONNEL	EO 11103	VOL. I
CLAIMS (AGAINST U.S. GOVERNMENT) PATENTS FOREIGN AID	PL 87-195 SEC 606	VOL. I
CLAIMS (SEE ALSO FOREIGN CLAIMS) (SEE ALSO IADB) FOREIGN AID FRAUD	PL 87-195 SEC 640A	VOL. I
INVESTMENT DISPUTES	PL 87-195 SEC 635	VOL. I
SEIZURE OF U.S. FISHING VESSELS	PL 83-680 SEC 5	183
CLIMATE PROTECTION OF REPORT TO CONGRESS	PL 100-204 SEC 1104	383
UNHEALTHFUL POSTS FOREIGN SERVICE CREDIT	PL 96-465 SEC 817	VOL. II
COAL FEDERAL COAL EXPORT COMMISSION	PL 99-83 SEC 1304	VOL. I
U.S. EXPORTS TO JAPAN SENSE OF CONGRESS	PL 100-418 SEC 1933	VOL. III
COAST GUARD DRUG CONTROL APPROPRIATIONS FROM DEPARTMENT OF DEFENSE	PL 100-180 SEC 1242	VOL. I
DRUG-INTERDICTION ASSISTANCE	PL 99-145 SEC 1421	VOL. I
FISHERIES NORTH PACIFIC	PL 83-579 SEC 9	108
COASTAL WATER (SEE SEA LAW)		
COFFEE INTERNATIONAL AGREEMENT ACT OF 1980	PL 96-599	VOL. III
COLLECTIVE SECURITY (SEE MUTUAL DEFENSE)		
COLOMBO PLAN COUNCIL FOR TECHNICAL COOPERATION U.S. MEMBERSHIP IN	PL 86-108 SEC 502	VOL. I
COLUMBIA-U.S. RELATIONS NARCOTICS CONTROL	PL 96-533 SEC 402(C)	VOL. I

		PAGE
COMMANDER-IN-CHIEF POWERS (SEE ALSO WAR POWERS) (SEE WAR POWERS)		
COMMENDING ISRAEL ON ITS FORTIETH ANNIVERSARY	PL 100-311	623
COMMERCE, DEPARTMENT OF		
EXPORT TRADE OFFICE ESTABLISHED	PL 97-290 SEC 104	VOL. III
FOREIGN AID PROGRAM ADMINISTRATION OF	EO 12163 SEC 1-502	VOL. I
UNDER SECRETARY FOR EXPORT ADMINISTRATION	PL 96-72 SEC 15	VOL. III
COMMERCE, SECRETARY OF		
EDUCATIONAL AND CULTURAL EXCHANGE FUNCTIONS	EO 11034 SEC 3	VOL. II
ENDANGERED SPECIES WHALES	PL 81-676 SEC 2-9	153
EXPORT CONTROLS	EO 12131	VOL. III
EXPOSITIONS U.S. PARTICIPATION IN	PL 91-269 SEC 2-4	VOL. II
FISHERIES NORTH PACIFIC	PL 83-579 SEC 7	108
FOREIGN DIRECT INVESTMENT IN U.S.		
DUTIES REGARDING	EO 11858 SEC 2	VOL. III
STUDY OF	PL 93-479 SEC 2	VOL. III
OFFICE OF FOREIGN AVAILABILITY	PL 96-72 SEC 5(F)	VOL. III
REPORTS TO CONGRESS	PL 93-479 SEC 10	VOL. III
SERVICE INDUSTRIES DEVELOPMENT PROGRAM ESTABLISHMENT OF	PL 98-573 SEC 306	VOL. III
TRADE INJURIES ADJUSTMENT ASSISTANCE	PL 93-618 SEC 280-282	VOL. III
ADJUSTMENT ASSISTANCE FOR FIRMS	PL 93-618 SEC 251-264	VOL. III
TRADE STATISTICS	13 USC 301	VOL. III
COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD	PL 99-83 SEC 1303	VOL. I
COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT	PL 99-603 SEC 601	VOL. II
COMMISSION ON CENTRAL AMERICAN NEGOTIATIONS ESTABLISHMENT OF	PL 99-591 SEC 213	VOL. I
COMMISSION ON SECURITY AND COOPERATION IN EUROPE (SEE SECURITY AND COOPERATION IN EUROPE)		
COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY	PL 92-352 SEC 602-606	VOL. II
COMMISSION ON THE UKRAINE FAMINE ACT	PL 99-180	569
COMMODITIES (SEE TRADE)		
COMMODITY CREDIT CORPORATION		
ACQUIRING STRATEGIC MATERIALS	PL 85-931 SEC 7	VOL. I
AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 102	VOL. I
AGRICULTURAL EXPORT CREDIT REVOLVING FUND	PL 89-808 SEC 4(D)	VOL. I
BARTER PROGRAMS REPORT ON STATUS	PL 99-64 SEC 203	VOL. III
DEFERRED PAYMENTS	PL 95-501 SEC 201	VOL. I
EXPORT SALES	PL 89-808 SEC 4	VOL. I
FOOD FOR PEACE PROGRAM	PL 89-808 SEC 3-4	VOL. I
FREE ENTERPRISE AGRICULTURAL POLICIES	PL 99-198 SEC 1110	VOL. I
COMMUNICATIONS (INTERNATIONAL) (SEE ALSO USIA),	PL 84-885 SEC 35	VOL. II
INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, OFFICE OF	PL 84-885 SEC 35	VOL. II
INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION	PL 99-93 SEC 146	VOL. II
LINKS BETWEEN NUCLEAR ARMED COUNTRIES	PL 99-93 SEC 706	VOL. II
POLICY	PL 95-426 SEC 601	VOL. II
U.S.-SOVIET UNION LINK	PL 99-85	VOL. I
COMMUNICATIONS SYSTEM, NATIONAL ESTABLISHED	EO 12472	573
COMMUNISM		
EAST-WEST TRADE	PL 93-618 SEC 402-411	VOL. III
MIDDLE EAST AGGRESSION IN	PL 85-7 SEC 2	VOL. II

			PAGE
COMMUNIST COUNTRIES			
AGGRESSION			
MUTUAL DEFENSE AGAINST	PL 87-195	SEC 501	VOL. I
DEFINED	PL 87-195	SEC 620(F)	VOL. I
DUTY TO FREE TREATMENT DENIED	PL 93-618	SEC 502	VOL. III
IMF PARTICIPATION	PL 79-171	SEC 43(A)	VOL. III
U.S. RELATIONS WITH			
FOREIGN AID	PL 87-195	SEC 620(F)	VOL. I
COMPACT OF FREE ASSOCIATION			
APPROVAL AND EFFECTIVE DATE	PL 99-239	TITLE FOUR	VOL. III
APPROVAL BETWEEN U.S. AND			
PALAU	PL 99-658		VOL. III
APPROVAL OF	PL 99-239	SEC 101	VOL. III
DEFINITION OF TERMS	PL 99-239	TITLE FOUR	VOL. III
ECONOMIC RELATIONS	PL 99-239	TITLE TWO	VOL. III
GOVERNMENTAL RELATIONS	PL 99-239	TITLE ONE	VOL. III
IMPLEMENTATION OF	51 FR 40399		VOL. III
INVESTMENT DEVELOPMENT			
FUNDS	PL 99-239	SEC 111(B)	VOL. III
JURISDICTION	PL 99-239	SEC 202	VOL. III
MANAGEMENT OF	EO 12569		VOL. III
PREAMBLE AND TEXT	PL 99-239	SEC 201	VOL. III
SECURITY AND DEFENSE			
RELATIONS	PL 99-239	TITLE THREE	VOL. III
SUPPLEMENTAL PROVISIONS	PL 99-239	SEC 105	VOL. III
TARIFF AGREEMENTS WITH U.S.	PL 99-239	TITLE IV	VOL. III
TRADE AGREEMENTS WITH U.S.	PL 99-239	TITLE IV	VOL. III
U.S. INTERPRETATION AND			
POLICY REGARDING	PL 99-239	SEC 104	VOL. III
COMPACT OF FREE ASSOCIATION ACT OF 1985	PL 99-239		VOL. III
COMPETITION			
(SEE PRIVATE ENTERPRISE)			
COMPETITIVENESS POLICY COUNCIL			
AUTHORIZATION OF			
APPROPRIATIONS	PL 100-418	SEC 5209	VOL. III
ESTABLISHMENT OF	PL 100-418	SEC 5203	VOL. III
MEMBERSHIP AND			
REPRESENTATION	PL 100-418	SEC 5205	VOL. III
REPORT TO CONGRESS	PL 100-418	SEC 5208	VOL. III
COMPETITIVENESS POLICY COUNCIL ACT	PL 100-418	SEC 5201	VOL. III
COMPREHENSIVE ANTI-APARTHEID ACT OF 1986	PL 99-440		VOL. III
IMPLEMENTATION OF	EO 12571		VOL. III
COMPTROLLER GENERAL OF THE U.S.			
(SEE ALSO GAO)			
ACDA AUDIT	PL 87-297	SEC 46	VOL. II
COMPUTERS			
SOFTWARE			
COPYRIGHT PROTECTION	PL 98-573	SEC 251	VOL. III
U.S.-JAPAN RELATIONS			
TRADE AGREEMENTS	PL 100-418	SEC 1307	VOL. III
CONCILIATORS			
(SEE ARBITRATION)			
CONFERENCE ON CONFIDENCE AND SECURITY BUILDING MEASURES IN EUROPE	PL 100-456	SEC 901	VOL. II
CONGRESS			
(SEE ALSO REPORTS TO CONGRESS)			
(SEE ALSO WAR POWERS)			
COMMISSION ON SECURITY AND			
COOPERATION IN EUROPE	PL 94-304	SEC 7	VOL. II
EAST-WEST TRADE	PL 93-618	SEC 402	VOL. III
ENERGY ACTIONS			
REVIEW OF	PL 94-163	SEC 551	365
EXPEDITED PROCEDURES			
U.S. TROOP REMOVAL	PL 98-164	SEC 1013	VOL. II
FOREIGN TRAVEL			
LOCAL CURRENCIES	PL 83-665	SEC 502	431
	PL 83-665	SEC 502	VOL. I
GIFTS (FOREIGN)			
ACCEPTANCE OF	S RES 90-314		VOL. II
HOUSE WAYS AND MEANS			
COMMITTEE	PL 93-618	SEC 102	VOL. III
	PL 93-618	SEC 152	VOL. III
TRADE AGREEMENTS	PL 93-618	SEC 161	VOL. III
TRADE INJURIES	PL 93-618	SEC 201	VOL. III
INTERNATIONAL AGREEMENTS			
FISHERY	PL 94-265	SEC 203	21
INTERPARLIAMENTARY GROUPS	PL 86-42		441
	PL 86-420		443
	PL 84-689		445
PARTICIPATION IN	PL 86-628	SEC 105	434
JOINT COMMITTEE ON ATOMIC ENERGY			
ABOLISHED	PL 83-703	SEC 301	298
FUNCTIONS TRANSFERRED	PL 83-703	SEC 302	298

			PAGE
CONGRESS--CONTINUED			
MULTINATIONAL FORCE IN LEBANON			
U.S. PARTICIPATION	PL 98-119		VOL. II
NATIONAL EMERGENCY POWERS	PL 94-412	SEC 202	VOL. II
PARLIAMENTARY PROCEDURES	PL 93-148	SEC 6-7	VOL. II
TRADE AGREEMENTS	PL 93-618	SEC 151-154	VOL. III
REPORTS			
(SEE REPORTS TO CONGRESS)			
REPRESENTED AT U.N.	PL 79-264	SEC 2	VOL. II
REQUEST FOR INFORMATION FROM EXECUTIVE BRANCH	PL 92-352	SEC 502	VOL. II
REQUESTS FOR INFORMATION			
FOREIGN AID	PL 87-195	SEC 633A	VOL. I
SENATE FINANCE COMMITTEE	PL 93-618	SEC 102	VOL. III
	PL 93-618	SEC 152	VOL. III
TRADE AGREEMENTS	PL 93-618	SEC 161	VOL. III
TRADE INJURIES	PL 93-618	SEC 201	VOL. III
SENATE PROCEDURE	PL 94-329	SEC 601	VOL. I
STATE DEPARTMENT			
OVERSIGHT OF	PL 92-226	SEC 407	VOL. I
TRAVEL ABROAD			
FOREIGN CURRENCIES			
USED FOR	PL 83-665	SEC 502	431
	PL 83-665	SEC 502	VOL. I
WAR POWERS	PL 93-148	SEC 5-7	VOL. II
SINAI PERSONNEL	PL 94-110	SEC 1	VOL. II
WAR POWERS LEGISLATION			
PROCEDURES	PL 93-148	SEC 6-7	VOL. II
CONSERVATION			
ANTARCTIC MARINE LIVING RESOURCES	PL 98-623	TITLE III	229
DEFINED	PL 93-205	SEC 3(3)	197
CONSTITUTION (U.S.)			
NECESSARY AND PROPER CLAUSE	PL 93-148	SEC 1	VOL. II
WAR POWERS	PL 93-148	SEC 2	VOL. II
CONSULAR AFFAIRS, BUREAU OF	PL 82-414	SEC 104(B)	VOL. II
CONSULAR OFFICERS			
PASSPORTS			
PUNISHABLE VIOLATIONS	PL 80-772	SEC 1541	VOL. II
CONSULATES			
(SEE FOREIGN SERVICE BUILDINGS ACT OF 1926)			
CONTADORA AGREEMENT			
ASSISTANCE IN IMPLEMENTING	PL 99-88		VOL. I
CONTINGENCY FUND			
AUTHORIZATION OF			
APPROPRIATIONS	PL 87-195	SEC 451	VOL. I
CONTRACTS REPUDIATED BY FOREIGN GOVERNMENTS			
EFFECT ON ADB LOANS	PL 89-369	SEC 18	VOL. III
EFFECT ON IADB LOANS	PL 86-147	SEC 21	VOL. III
EFFECT ON IDA LOANS	PL 86-565	SEC 12	VOL. III
FOREIGN AID CUT-OFF	PL 87-195	SEC 620(E)	VOL. I
CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT	PL 97-446		VOL. II
CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES			
IMPLEMENTATION OF	PL 98-623	TITLE III	229
CONVENTION ON THE INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA			
IVORY	PL 100-478	SEC 2304	397
CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES	PL 93-618	SEC 502	VOL. III
CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES ACT OF 1966	PL 89-532		VOL. III
COOPERATIVE RESEARCH AND DEVELOPMENT PROGRAMS			
NON-NATO ALLIES	PL 99-661	SEC 1105	VOL. I
AUTHORIZATION OF APPROPRIATIONS	PL 100-180	SEC 207	VOL. I
LENDING EQUIPMENT AND SUPPLIES	PL 90-629	SEC 65	VOL. I
COPYRIGHTS			
TRADE AGREEMENTS	PL 93-618	SEC 405	VOL. III
CORRUPTION			
FOREIGN AID ADMINISTRATION	PL 87-195	SEC 621	VOL. I
COSTA RICA-U.S. RELATIONS			
AMERICAN PROPERTY AND BUSINESSES IN	PL 100-461	SEC 593	VOL. I
COUNTERTERRORISM PROTECTION FUND			
AUTHORIZATION OF APPROPRIATIONS	PL 84-885	SEC 39	VOL. II
COUNTERVAILING DUTIES			
APPRAISALS OF VALUE	PL 71-361	SEC 303	VOL. III

		PAGE
COUNTERVAILING DUTIES--CONTINUED		
CANADIAN		
REVIEW OF BY U.S.	PL 100-449 SEC 408	VOL. III
CONDITIONAL PAYMENT OF	PL 71-361 SEC 709	VOL. III
DETERMINATIONS		
FINAL	PL 71-361 SEC 705	VOL. III
PRELIMINARY	PL 71-361 SEC 703	VOL. III
DOWNSTREAM PRODUCT		
MONITORING	PL 71-361 SEC 780	VOL. III
IMPOSITION OF	PL 71-361 SEC 701	VOL. III
INVESTIGATION		
INITIATION OF	PL 71-361 SEC 702	VOL. III
TERMINATION OF	PL 71-361 SEC 704	VOL. III
JUDICIAL REVIEW	PL 71-361 SEC 516A	VOL. III
LEVY OF	PL 71-361 SEC 303	VOL. III
NON-RUBBER FOOTWEAR	PL 71-361 SEC 303	VOL. III
ORDERS		
PREVENTING CIRCUMVENTION	PL 71-361 SEC 781	VOL. III
ORDERS PUBLISHED	PL 71-361 SEC 706	VOL. III
PENDING INVESTIGATIONS	PL 96-39 SEC 102	VOL. III
REPORTS TO CONGRESS	PL 71-361 SEC 303	VOL. III
REVIEW OF	PL 71-361 SEC 751	VOL. III
TRANSITION RULES	PL 96-39 SEC 104	VOL. III
UPSTREAM SUBSIDIES	PL 71-361 SEC 771A	VOL. III
COUNTRIES (FOREIGN)		
GSP ELIGIBILITY	19 USC 1202	VOL. III
COURTS		
ACT OF STATE DOCTRINE	PL 87-195 SEC 620(E)(2)	VOL. I
JURISDICTION	PL 89-532 SEC 3	VOL. III
(SEE ALSO PRIVILEGES AND IMMUNITIES)		
ADB	PL 89-369 SEC 8	VOL. III
BRETTON WOODS AGREEMENTS ACT	PL 79-171 SEC 10	VOL. III
IADB	PL 86-147 SEC 8	VOL. III
IDA	PL 86-565 SEC 8	VOL. III
IFC	PL 84-350 SEC 8	VOL. III
VENUE		
ADB	PL 89-369 SEC 8	VOL. III
BRETTON WOODS AGREEMENTS ACT	PL 79-171 SEC 10	VOL. III
IADB	PL 86-147 SEC 8	VOL. III
IDA	PL 86-565 SEC 8	VOL. III
IFC	PL 84-350 SEC 8	VOL. III
OPIC	PL 87-195 SEC 239	VOL. I
COVERT AID		
NICARAGUA		
APPROPRIATIONS, 1984	PL 98-212 SEC 775	VOL. I
LIMITATION	PL 98-215 SEC 108	VOL. I
CRIMINAL CODE (U.S.)		
DIPLOMATIC OR CONSULAR BUILDINGS IN U.S.	PL 92-539 SEC 301	VOL. II
FOREIGN OFFICIALS	PL 92-539	VOL. II
KIDNAPING	PL 92-539 SEC 201-202	VOL. II
MURDER CONSPIRACY	PL 92-539 SEC 101-102	VOL. II
MURDER OR MANSLAUGHTER OF	PL 92-539 SEC 101-102	VOL. II
PASSPORTS	PL 80-772 SEC 1541-46	VOL. II
CSCE		
(SEE SECURITY AND COOPERATION IN EUROPE, COMMISSION ON)		
CUBA		
DRUG TRAFFICKING	PL 99-83 SEC 617	VOL. I
HUMAN RIGHTS		
INVESTIGATION OF	PL 100-461 SEC 582	VOL. I
REFUGEES	PL 96-533 SEC 715	VOL. I
DEPORTATION OF	PL 96-533 SEC 712	VOL. I
REPORT ON COSTS TO ASSIST	PL 97-241 SEC 502	VOL. II
CUBA-U.S. RELATIONS		
AID PROHIBITION	PL 100-461 SEC 550	VOL. I
CLAIMS	PL 81-455 SEC 501-513	485
COMMUNIST INFLUENCE	PL 87-733	VOL. II
DRUG CONTROL	PL 99-83 SEC 617	VOL. I
FOREIGN AID		
CUT-OFF	PL 87-195 SEC 620(A)	VOL. I
PROHIBITED	PL 95-424 SEC 602	VOL. I
HUMAN RIGHTS VIOLATIONS	PL 100-204 SEC 1211	VOL. II
IMPORTS		
RESTRICTIONS ON	PL 100-418 SEC 1911	VOL. III
NEGOTIATIONS	PL 95-105 SEC 511	VOL. II
POLITICAL PRISONERS AND IMMIGRANTS		
PROCESSING OF	PL 100-202 TITLE VII	VOL. II
RADIO BROADCASTS	PL 98-111	VOL. II
RADIO MARTI	PL 97-241 SEC 404	VOL. II
REAFFIRMATION OF POLICY TOWARDS	PL 98-525 SEC 1543	VOL. I

		PAGE
CUBA-U.S. RELATIONS--CONTINUED		
REFUGEES	EO 12341	VOL. II
	PL 96-422 SEC 501	VOL. II
REFUGEES FROM EDUCATION OF	EO 11077 SEC 2	VOL. II
TRADE	PL 71-361 SEC 350(B)	VOL. III
TROOPS IN AFRICA	PL 95-426 SEC 613	VOL. II
CUBA, RADIO BROADCASTING TO	PL 98-111	VOL. II
APPROPRIATIONS, 1989	PL 100-459 TITLE V	VOL. II
AUTHORIZATION, 1984-85	PL 98-111 SEC 8	VOL. II
RADIO MARTI	PL 97-241 SEC 404	VOL. II
CUBAN POLITICAL PRISONERS AND IMMIGRANTS	PL 100-202 TITLE VII	VOL. II
CUBAN RESOLUTION	PL 87-733	VOL. II
CULEBRA MILITARY (U.S.)	PL 93-365 SEC 704	VOL. I
CULTURAL PROPERTY ADVISORY COMMITTEE ON	PL 97-446 SEC 306	VOL. II
CONVENTION ON	PL 97-446	VOL. II
CURRENCIES (FOREIGN) (SEE ALSO AGRICULTURAL COMMODITY SALES) (SEE ALSO PAR VALUES OF CURRENCIES)		
AGREEMENTS TO USE SURPLUS	PL 83-665 SEC 402	VOL. I
APPROPRIATIONS ACTS	PL 87-125 SEC 508	VOL. I
ARMS SALES (U.S.)	PL 87-195 SEC 609	VOL. I
BALANCE OF PAYMENTS POSITION OF U.S.	31 USC 5303	VOL. I
CONVERTIBILITY OPIC INSURANCE	PL 87-195 SEC 234(A)	VOL. I
COUNTERPART FUNDS MILITARY ACTIVITIES	PL 93-189 SEC 40	VOL. I
EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS	PL 87-195 SEC 612	VOL. I
EXPENDITURE BY AGENCIES	31 USC 1306	VOL. I
FEDERAL AGENCIES USE REIMBURSEMENT OF TREASURY NOTE	PL 83-480 NOTE	VOL. I
FOREIGN AID	PL 87-195 SEC 636	VOL. I
ACCOUNTING	PL 87-195 SEC 613	VOL. I
MILITARY ACTIVITIES	PL 93-189 SEC 40	VOL. I
PRESIDENTIAL DISCRETION	PL 87-195 SEC 614	VOL. I
SPECIAL AUTHORITY	PL 87-195 SEC 648	VOL. I
FOREIGN SERVICE BUILDINGS	PL 69-186 SEC 4(I)	VOL. II
INFORMATIONAL MEDIA GUARANTIES	PL 80-402 SEC 1011	VOL. II
MAXIMUM USE OF	PL 87-195 SEC 612	VOL. I
PEACE CORPS USE	PL 87-293 SEC 17	VOL. I
PL 480 SALES	EO 12220 SEC 1-4	VOL. I
REPORTS ON	PL 93-110	VOL. III
SOCIAL PROGRESS TRUST FUND	PL 93-189 SEC 36	VOL. I
TRAVEL ABROAD CONGRESSIONAL MEMBERS AND STAFF	PL 83-665 SEC 502	431
CONGRESSIONAL MEMBERS AND STAFFS	PL 83-665 SEC 502	VOL. I
USING TO PROTECT ENDANGERED SPECIES	PL 93-205 SEC 8	199
CURRENCIES (FOREIGN) SALARIES OF U.S. GOVERNMENT EMPLOYEES ABROAD	PL 83-665 SEC 523(D)	VOL. I
CUSTOMS DEEPWATER PORTS	PL 93-627 SEC 19(D)	104
CUSTOMS AND MISCELLANEOUS AMENDMENTS	PL 98-573 TITLE II	VOL. III
CUSTOMS COURT UNFAIR IMPORT PRACTICES	PL 71-361 SEC 337	VOL. III
CUSTOMS DUTIES (SEE ALSO IMPORT REGULATIONS) INTERNATIONAL ORGANIZATIONS PRIVILEGES AND IMMUNITIES	PL 79-291 SEC 3	VOL. II
CYPRUS ECONOMIC SUPPORT FUND	PL 99-83 SEC 203	VOL. I
NEGOTIATIONS WITH TURKEY	PL 87-195 SEC 620(X)	VOL. I
SETTLEMENT OF CONFLICT	PL 94-104 SEC 2	VOL. I
	PL 99-83 SEC 101(F)	VOL. I
TURKISH AND GREEK FORCES ON MILITARY EQUIPMENT SALES	PL 100-461 SEC 579	VOL. I
CYPRUS-U.S. RELATIONS	PL 87-195 SEC 620C	VOL. I
FOREIGN AID	PL 87-195 SEC 495	VOL. I
APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
CZECHOSLOVAKIA-U.S. RELATIONS CLAIMS	PL 81-455 SEC 401-415	434
	PL 97-127	513

			PAGE
CZECHOSLOVAKIA-U.S. RELATIONS--CONTINUED			
	PL 93-618	SEC 408	VOL. III
TRADE	PL 93-618	SEC 408	VOL. III
CZECHOSLOVAKIAN CLAIMS FUND	PL 97-127	SEC 4	514
CZECHOSLOVAKIAN CLAIMS SETTLEMENT ACT OF 1981	PL 97-127		513
D			
DAC			
(SEE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT)			
DAIRY SURPLUS			
OVERSEAS DONATIONS	PL 81-439	SEC 416(B)	VOL. I
DEBT REDUCTION			
DEVELOPING COUNTRIES			
IMF REVIEW	PL 100-418	SEC 3113	VOL. III
WORLD BANK REVIEW	PL 100-418	SEC 3113	VOL. III
POOREST DEVELOPING COUNTRIES			
REPORT TO CONGRESS	PL 100-418	SEC 3123	VOL. III
POOREST INDEBTED COUNTRIES			
SPECIAL DRAWING RIGHTS	PL 100-418	SEC 3123	VOL. III
DEBTS (FOREIGN)			
DEBT-FOR-DEVELOPMENT SWAPS	PL 95-118	SEC 1608	VOL. III
EGYPT			
REPORT TO CONGRESS	PL 99-83	SEC 1205	VOL. I
IMF ECONOMIC ADJUSTMENT			
PROGRAMS	PL 79-171	SEC 45	VOL. III
ISRAEL			
REPORT TO CONGRESS	PL 99-83	SEC 1205	VOL. I
LATIN AMERICA			
REPORT TO CONGRESS	PL 99-83	SEC 719	VOL. I
SETTLEMENT OF	PL 94-161	SEC 321	VOL. I
TURKEY			
REPORT TO CONGRESS	PL 99-83	SEC 1205	VOL. I
DEBTS (U.S.)			
FOREIGN CURRENCIES FROM AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 104(A)	VOL. I
DECORATIONS			
(SEE GIFTS)			
DEEP SEABED HARD MINERAL			
REMOVAL TAX ACT OF 1979	PL 96-283	TITLE IV	79
DEEP SEABED HARD MINERAL			
RESOURCES ACT	PL 96-283		47
ENFORCEMENT OF	PL 96-283	TITLE III	73
IMPACT OF INTERNATIONAL AGREEMENT	PL 96-283	TITLE II	71
DEEPWATER PORT ACT OF 1974	PL 93-627		100
DEEPWATER PORTS			
ADJACENT COASTAL STATE			
DEFINED	PL 93-627	SEC 3(1)	100
JURISDICTION	PL 93-627	SEC 19(B)	103
COURT JURISDICTION	PL 93-627	SEC 19(E)	104
DEFINED	PL 93-627	SEC 3(10)	101
FOREIGN VESSEL USE	PL 93-627	SEC 19(C)	104
INTERNATIONAL LAW	PL 93-627	SEC 11	103
JURISDICTION OVER	PL 93-627	SEC 19(A)	103
MARINE ENVIRONMENTAL PROTECTION	PL 93-627	SEC 10	102
NAVIGATIONAL SAFETY	PL 93-627	SEC 10	102
NEGOTIATIONS WITH CANADA AND MEXICO	PL 93-627	SEC 22	104
REPORT TO CONGRESS	PL 93-627	SEC 20	104
DEFENSE			
(SEE MILITARY, U.S.)			
DEFENSE AUTHORIZATION			
AMENDMENTS AND BASE CLOSURE AND REALIGNMENT ACT	PL 100-526		VOL. I
DEFENSE PRODUCTION ACT			
AMENDMENTS OF 1975	PL 94-152		338
RELATIONSHIP TO ENERGY POLICY AND CONSERVATION ACT	PL 94-152	SEC 3	338
DEFENSE, DEPARTMENT OF			
APPROPRIATIONS, 1989			
HUMANITARIAN ASSISTANCE USE	PL 100-463	SEC 8051	VOL. I
TRANSFER OF FUNDS	PL 100-463	SEC 8035	VOL. I
ASSISTANCE TO U.N.	PL 79-264	SEC 7	VOL. II
REIMBURSEMENT OF	PL 79-264	SEC 7	VOL. II
ATOMIC ENERGY			
ACCESS TO INFORMATION	PL 83-703	SEC 143	290
ATOMIC WEAPONS			
INTERNATIONAL COOPERATION	PL 83-703	SEC 144	291
AUTHORIZATION OF APPROPRIATIONS	PL 79-264	SEC 7	VOL. II

		PAGE
DEFENSE, DEPARTMENT OF--CONTINUED		
DEFENSE CONTRACTS		
FOREIGN GOVERNMENT INTEREST DISCLOSURE	10 USC 2327	VOL. I
DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1976	PL 94-212	VOL. I
DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1975	PL 93-365	VOL. I
DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1979	PL 95-485	VOL. I
DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1989	PL 100-463	VOL. I
DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1983	PL 97-252	VOL. I
DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984	PL 98-94	VOL. I
DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985	PL 98-525	VOL. I
DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1986	PL 99-145	VOL. I
DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1987	PL 99-661	VOL. I
DRUG CONTROL ASSISTANCE TO	10 USC 380	VOL. I
DRUG-INTERDICTION ASSISTANCE AUTHORIZATION OF APPROPRIATIONS	PL 99-145 SEC 1422	VOL. I
FOREIGN AID PROGRAM ADMINISTRATION OF	EO 12163 SEC 1-3	VOL. I 590
INSPECTOR GENERAL	PL 95-452 SEC 8	
INTELLIGENCE RESPONSIBILITIES	EO 12333 SEC 1.11	VOL. II
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989	PL 100-180	VOL. I
NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1989	PL 100-456	VOL. I
RYUKYU CLAIMS	PL 89-296	499
DEFENSE, SECRETARY OF		
ARMS SALES DUTIES	EO 11958	VOL. I
ATOMIC ENERGY AUTHORITY TRANSFERRED TO	EO 10841 SEC 2	312
AUTHORITY IN EUROPEAN AIR DEFENSE AGREEMENTS	PL 98-525 SEC 1097	VOL. I
BALLISTIC MISSILE DEFENSE REPORT TO CONGRESS	PL 99-145 SEC 226	VOL. I
CHEMICAL WEAPONS TESTS REPORT TO CONGRESS	PL 99-145 SEC 1413	VOL. I
EXPORT CONTROLS	PL 96-72 SEC 4(E)	VOL. III
EXPORT OF TECHNOLOGY	PL 93-365 SEC 709	VOL. I
HUMANITARIAN ASSISTANCE AUTHORIZATION TO TRANSPORT	PL 98-525 SEC 1540	VOL. I
USING EXCESS NON-LETHAL SUPPLIES	10 USC 2547	VOL. I
MILITARY AID ADMINISTRATION	PL 87-195 SEC 623	VOL. I
MILITARY FORCE STRUCTURE REPORT TO CONGRESS	10 USC 113	VOL. I
SOVIET UNION-U.S. EXCHANGE OF MILITARY PERSONNEL REPORT TO CONGRESS	PL 99-145 SEC 1005	VOL. II
DENUCLEARIZATION (SEE ARMS CONTROL)		
DEPARTMENT OF DEFENSE (SEE DEFENSE, DEPARTMENT OF)		
DEPARTMENT OF ENERGY ACT OF 1978 - CIVILIAN APPLICATIONS	PL 95-238	335
DEPARTMENT OF STATE (SEE STATE, DEPARTMENT OF)		
DEPARTMENT OF STATE APPROPRIATIONS ACT, 1989	PL 100-459 TITLE III	VOL. II
DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973	PL 93-126	VOL. II
DEPARTMENT OF STATE AUTHORIZATION ACT, FISCAL YEARS 1980 AND 1981	PL 96-60	VOL. II
DEPARTMENT OF STATE AUTHORIZATION ACT, FISCAL YEARS 1982 AND 1983	PL 97-241 SEC 101	VOL. II
DEPARTMENT OF STATE		

			PAGE
AUTHORIZATION ACT, FISCAL YEARS 1984 AND 1985	PL 98-164	SEC 101	VOL. II
DEPOSITORIES	PL 89-369	SEC 6	VOL. III
ADB			
BRETTON WOODS AGREEMENTS ACT	PL 79-171	SEC 6	VOL. III
IADB	PL 86-147	SEC 6	VOL. III
IDA	PL 86-565	SEC 6	VOL. III
IFC	PL 84-350	SEC 6	VOL. III
DESALTING PLANT	PL 87-195	SEC 219	VOL. I
DEVELOPING COUNTRIES			
HEALTH CARE			
PROMOTING IMMUNIZATION AND ORAL REHYDRATION	PL 99-529	SEC 101	VOL. I
DEVELOPMENT			
(SEE ALSO ALLIANCE FOR PROGRESS)			
(SEE ALSO FOREIGN AID)			
(SEE ALSO LESS DEVELOPED COUNTRIES)			
(SEE ALSO U.N.)			
EMPLOYEE STOCK OWNERSHIP PLANS			
EXPANDED US OF	PL 99-83	SEC 713	VOL. I
INTERNATIONAL ADVISORY COMMISSION FOR THE CARIBBEAN REGION	PL 99-83	SEC 714	VOL. I
PRESIDENTIAL TASK FORCE ON PROJECT ECONOMIC JUSTICE	PL 99-83	SEC 713	VOL. I
TRUST TERRITORY OF THE PACIFIC ISLANDS	PL 83-451	SEC 1	507
LOAN FUND	PL 92-257		511
DEVELOPMENT AID			
(SEE FOREIGN AID)			
DEVELOPMENT ASSISTANCE COMMITTEE			
(SEE OECD)			
(SEE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT)			
DEVELOPMENT LOAN COMMITTEE	PL 87-195	SEC 122	VOL. I
MEMBERSHIP OF	EO 12163	SEC 1-505	VOL. I
DIAMOND STONES			
DISPOSAL OF	PL 96-175	SEC 3	VOL. III
DIEGO GARCIA			
(SEE INDIAN OCEAN)			
DIPLOMATIC AND CONSULAR SERVICE			
(SEE ALSO AMBASSADORS)			
(SEE ALSO CONSULAR OFFICERS)			
(SEE ALSO FOREIGN SERVICE BUILDINGS)			
(SEE ALSO FOREIGN SERVICE)			
BUREAU OF DIPLOMATIC SECURITY	PL 99-399	SEC 104	VOL. II
DIPLOMATIC SECURITY PROGRAM			
AUTHORIZATION OF APPROPRIATIONS	PL 99-399	SEC 401	VOL. II
	PL 100-459	TITLE III	VOL. II
EMERGENCIES	PL 84-885	SEC 4	VOL. II
EMERGENCY EXPENDITURES	PL 100-204	SEC 124	VOL. II
REPORT TO CONGRESS	PL 99-93	SEC 139	VOL. II
EMERGENCY TELEPHONE SERVICE			
EMPLOYMENT OF SOVIET CITIZENS	PL 99-93	SEC 136	VOL. II
	PL 99-93	SEC 136	VOL. II
EQUIVALENCY OF REPRESENTATION	PL 98-618	SEC 601	VOL. II
			531
FOREIGN AGENTS REGISTRATION	PL 75-583	SEC 3	VOL. II
GIFTS TO FOREIGN PERSONS	PL 84-885	SEC 20	VOL. II
PROMOTING SECURITY	PL 99-399	SEC 102	VOL. II
SECURITY			
REPORTS TO CONGRESS	PL 100-202	TITLE III	VOL. II
ROLE OF SECRETARY OF STATE	PL 99-399	SEC 103	VOL. II
DIPLOMATIC IMMUNITY			
LIABILITY INSURANCE			
COVERAGE	PL 100-204	SEC 137	VOL. II
REPORT TO CONGRESS	PL 100-204	SEC 137	VOL. II
STUDY ON	PL 95-426	SEC 607	VOL. II
DIPLOMATIC RELATIONS			VOL. II
DIPLOMATIC RELATIONS ACT	PL 95-393		VOL. II
DIPLOMATIC SECURITY ACT	PL 99-399	SEC 101	
DIPLOMATIC SECURITY PROGRAM			
AUTHORIZATION OF APPROPRIATIONS, 1986 AND 1987	PL 99-399	SEC 401	VOL. II
DIPLOMATIC SECURITY SERVICE			
POLYGRAPH SCREENING OF MEMBERS	PL 100-204	SEC 163	VOL. II

			PAGE
DIPLOMATS			
PROTECTION OF SECRET SERVICE USE FOR	PL 97-418		VOL. II
DIRE EMERGENCY APPROPRIATIONS ACT	PL 100-393		VOL. II
DISABLED PERSONS			
PEACE CORPS HELP	PL 87-293	SEC 3(H)	VOL. I
DISARMAMENT			
(SEE ARMS CONTROL)			
DISASTER RELIEF			
(SEE ALSO FOREIGN AID, DISASTER ASSISTANCE)			
AFRICA	PL 87-195	SEC 495K	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
BANGLADESH	PL 100-576		VOL. I
FOREIGN AID	PL 87-195	SEC 491-495H	VOL. I
BORROWING AUTHORITY	PL 87-195	SEC 492(B)	VOL. I
FOREIGN CURRENCIES FROM AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 104(D)	VOL. I
LEBANON	PL 87-195	SEC 495J	VOL. I
NICARAGUA	PL 87-195	SEC 494	VOL. I
PAKISTAN	PL 87-195	SEC 494	VOL. I
TRUST TERRITORY OF THE PACIFIC ISLANDS	PL 83-451	SEC 3	509
DISCRIMINATION			
AGAINST U.S. PERSONNEL			
FOREIGN AID RESTRICTIONS	PL 87-195	SEC 666	VOL. I
MILITARY AID RESTRICTIONS	PL 87-195	SEC 505(G)	VOL. I
MILITARY SALES RESTRICTIONS	PL 90-629	SEC 5	VOL. I
REPORTS TO CONGRESS	PL 87-195	SEC 505(G)	VOL. I
	PL 90-629	SEC 5	VOL. I
DISPUTES			
(SEE ARBITRATION)			
(SEE OAS)			
(SEE U.N.)			
DIVIDENDS			
IFC	PL 84-350	SEC 7	VOL. III
DRIFTNET FISHING			
MONITORING AGREEMENTS	PL 100-220	SEC 4004	178
DRIFTNET IMPACT, MONITORING, ASSESSMENT, AND CONTROL ACT OF 1987	PL 100-220	TITLE IV	177
DRUG CONTROL			
AFGHANISTAN AS A SOURCE OF HEROIN	PL 100-690	SEC 4308	VOL. I
AFRICA	PL 99-570	SEC 2016	VOL. I
AID DRUG EDUCATION PROGRAMS	PL 99-570	SEC 2028	VOL. I
AID SUSPENDED	PL 87-195	SEC 481	VOL. I
ASSISTANCE FROM DEPARTMENT OF DEFENSE	10 USC 380		VOL. I
AUTHORIZATION OF APPROPRIATIONS	PL 87-195	SEC 482	VOL. I
BOLIVIA			
ASSISTANCE TO	PL 100-690	SEC 4302	VOL. I
CONDITIONS FOR ASSISTANCE	PL 99-570	SEC 2012	VOL. I
CARIBBEAN			
TRAINING CENTER	PL 100-690	SEC 4106	VOL. I
COAST GUARD			
DRUG-INTERDICTION ASSISTANCE	PL 99-145	SEC 1421	VOL. I
FUNDS TRANSFERRED FROM DEPARTMENT OF DEFENSE	PL 100-180	SEC 1242	VOL. I
COLOMBIA	PL 96-533	SEC 402(C)	VOL. I
ASSISTANCE TO	PL 100-690	SEC 4305	VOL. I
COUNTRIES FAILING TO CONTROL			
REALLOCATION OF ASSISTANCE FUNDS	PL 87-195	SEC 486	VOL. I
CROP SUBSTITUTION PROJECTS			
ASSISTANCE FROM MDBS	PL 99-570	SEC 2018	VOL. I
CUBA	PL 99-83	SEC 617	VOL. I
DECLARED A NATIONAL SECURITY PROBLEM	PL 99-570	SEC 2019	VOL. I
DEPARTMENT OF DEFENSE			
DRUG-INTERDICTION ASSISTANCE	PL 99-145	SEC 1422	VOL. I
DEPARTMENT OF DEFENSE AS LEAD AGENCY	PL 100-456	SEC 1102	VOL. I
DEPARTMENT OF STATE			
COORDINATION OF ASSISTANCE EFFORTS	PL 100-690	SEC 4601	VOL. I
DETERMINING MAJOR DRUG-TRANSIT COUNTRIES	PL 100-690	SEC 4405	VOL. I

		PAGE
DRUG CONTROL--CONTINUED		
DEVELOPMENT OF SAFE HERBICIDES	PL 99-570 SEC 2006	VOL. I
DRUG ENFORCEMENT AGENTS ABROAD USING DIPLOMATIC PASSPORTS	PL 99-570 SEC 2010	VOL. I
DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES ECONOMIC ACTIONS AGAINST	PL 93-618 SEC 802	VOL. III
DRUG TRAFFICKERS AID PROHIBITION	PL 87-195 SEC 487	VOL. I
E-2 AIRCRAFT TESTING USE OF	PL 99-145 SEC 1424	VOL. I
EDUCATION PROGRAMS ABROAD REPORT TO CONGRESS	PL 99-570 SEC 2029	VOL. I
FOREIGN GOVERNMENTS	PL 99-570 SEC 2013	VOL. I
FOREIGN AID CONTROLS ON USE OF AIRCRAFT	PL 87-195 SEC 489	VOL. I
FOREIGN AID PROHIBITION ON USING TO ACQUIRE REAL PROPERTY	PL 87-195 SEC 488	VOL. I
FOREIGN GOVERNMENTS EFFORTS CONDITIONS FOR AID	PL 99-167 SEC 124	VOL. I
FOREIGN GOVERNMENTS TRAFFICKING IN REPORT TO CONGRESS	PL 87-195 SEC 481(E)(6)	VOL. I
ILLICIT DRUG PRODUCTION MDB PROGRAMS TO REDUCE ECONOMIC DEPENDENCE	PL 95-118 SEC 1606	VOL. III
REPROGRAMMING FUNDS	PL 100-461 SEC 549	VOL. I
INCREASED ATTENTION TO COOPERATIVE COUNTRIES	PL 100-690 SEC 4301	VOL. I
INCREASED INTERNATIONAL EFFORTS	PL 99-570 SEC 2020	VOL. I
INTERDICTION PROCEDURES	PL 99-570 SEC 2015	VOL. I
INTERDICTION OF VESSELS AND VEHICLES REPORT TO CONGRESS	PL 99-661 SEC 1373	VOL. I
INTERNATIONAL COCAINE TRADE REGIONAL PLAN TO FIGHT	PL 100-690 SEC 4105	VOL. I
INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING	PL 99-570 SEC 2021	VOL. I
INTERNATIONAL CRIMINAL COURT SYSTEM	PL 100-690 SEC 4108	VOL. I
INTERNATIONAL CURRENCY TRANSACTIONS REPORTING	PL 100-690 SEC 4701	VOL. I
INTERNATIONAL DRUG CONFERENCE	PL 100-690 SEC 4104	VOL. I
INTERNATIONAL NARCOTICS	PL 99-570 SEC 2001	VOL. I
ASSIGNING DEA AGENTS ABROAD	PL 100-204 SEC 801	VOL. II
INTERNATIONAL PROGRAMS REPORT TO CONGRESS	PL 99-570 SEC 2007	VOL. I
IRAN, AFGHANISTAN, AND LAOS	PL 99-570 SEC 2026	VOL. I
JAMAICA	PL 99-83 SEC 610	VOL. I
LAOS DRUG PRODUCTION AND TRAFFICKING	PL 100-690 SEC 4309	VOL. I
LATIN AMERICA APPROPRIATIONS FOR	PL 100-461 SEC 578	VOL. I
ESTABLISHING A REGIONAL ORGANIZATION	PL 99-83 SEC 615	VOL. I
MEXICO ASSISTANCE TO	PL 100-690 SEC 4304	VOL. I
EFFORTS IN CONTROLLING	PL 99-570 SEC 2030	VOL. I
MEXICO-U.S. INTERGOVERNMENTAL COMMISSION CREATION OF	PL 99-570 SEC 2024	VOL. I
MILITARY ASSISTANCE TO FOREIGN GOVERNMENTS	PL 100-690 SEC 4205	VOL. I
NARCOTERRORISM RESPONDING TO	PL 99-570 SEC 2014	VOL. I
NARCOTERRORISM AND DRUG TRAFFICKING REWARD FOR INFORMATION ON	PL 84-885 SEC 36	VOL. II
PAKISTAN	PL 99-570 SEC 2025	VOL. I
ASSISTANCE TO	PL 100-690 SEC 4306	VOL. I
PASSPORTS DENIAL TO DRUG TRAFFICKERS	PL 84-885 SEC 42	VOL. II
PERU	PL 99-83 SEC 612	VOL. I

		PAGE
DRUG CONTROL--CONTINUED		
ASSISTANCE TO	PL 100-690 SEC 4303	VOL. I
PRODUCTION OF DEVELOPMENT PROGRAMS	PL 87-195 SEC 126	VOL. I
PROGRESS BY DRUG-TRANSIT COUNTRIES REPORT TO CONGRESS	PL 93-618 SEC 804	VOL. III
SHARING INFORMATION ON DRUG TRAFFICKERS	PL 99-570 SEC 2011	VOL. I
	PL 99-93 SEC 132	VOL. II
SMUGGLING INTO U.S. GAO STUDY	PL 100-180 SEC 1241	VOL. I
STATE DEPARMENT	PL 95-426 SEC 115	VOL. II
TRAFFICKERS ACCESSING FOREIGN BANK ACCOUNTS	PL 99-83 SEC 619	VOL. I
U.S. INTERNATIONAL NARCOTICS CONTROL COMMISSION	PL 99-93 SEC 814	VOL. II
U.S. PARTICIPATION IN FOREIGN COUNTRIES	PL 87-195 SEC 481(C)	VOL. I
UPDATING EXTRADITION TREATIES	PL 99-93 SEC 133	VOL. II
USIA DRUG EDUCATION PROGRAMS	PL 99-570 SEC 2027	VOL. I
USING AIRCRAFT PILOT AND AIRCRAFT MAINTENANCE TRAINING	PL 99-570 SEC 2004	VOL. I
PROVIDING DEFENSIVE WEAPONS	PL 99-83 SEC 607	VOL. I
VISAS DENIAL TO DRUG TRAFFICKERS	PL 100-204 SEC 804	VOL. II
WESTERN HEMISPHERE REGIONAL ANTI-NARCOTICS FORCES	PL 100-690 SEC 4101	VOL. I
DRUG ENFORCEMENT ADMINISTRATION AGENTS VIOLENCE AGAINST	PL 99-93 SEC 134(C)	VOL. II
DRUG TRADE		
EFFECT ON ADB LOANS	PL 89-369 SEC 19	VOL. III
EFFECT ON IADB LOANS	PL 86-147 SEC 22	VOL. III
EFFECT ON IDA LOANS	PL 86-565 SEC 13	VOL. III
REPORTS TO CONGRESS	PL 93-618 SEC 604	VOL. III
DUMPING (SEE ANTIDUMPING)		
E		
EAST TIMOR RELIEF IN	PL 96-533 SEC 408	VOL. I
EAST-WEST CENTER		
LOCATION	PL 86-472 SEC 702	VOL. II
PROGRAMS	PL 86-472 SEC 703	VOL. II
PURPOSE	PL 86-472 SEC 702	VOL. II
REPORTS TO CONGRESS	PL 86-472 SEC 704	VOL. II
EAST-WEST FOREIGN TRADE BOARD	EO 11846 SEC 2(E)	VOL. III
	PL 93-618 SEC 410-411	VOL. III
ESTABLISHED	EO 11846 SEC 7	VOL. III
EASTERN EUROPE RESEARCH ON	PL 98-164 SEC 801	VOL. II
EASTERN EUROPE-U.S. RELATIONS CHRISTIANS RELIGIOUS PERSECUTION OF	PL 100-204 SEC 1204	VOL. II
EASTERN PACIFIC TUNA LICENSING ACT OF 1984	PL 98-445	137
ECONOMIC AID (SEE FOREIGN AID)		
ECONOMIC COMMISSION FOR AFRICA USING U.S. CONTRIBUTION TO U.N.	PL 98-164 SEC 114(A)(7)	VOL. II
ECONOMIC COMPETITIVENESS (U.S.) REVERSING THE DECLINE OF	PL 100-418 SEC 5202	VOL. III
ECONOMIC COOPERATION ACT OF 1948 IRISH COUNTERPART FUNDS	PL 83-665 SEC 417	VOL. I
ECONOMIC DEVELOPMENT FINANCIAL INSTITUTION AID	PL 95-118	VOL. III
ECONOMIC INTEGRATION (SEE GATT)		
ECONOMIC POLICY (INTERNATIONAL) REPORT TO CONGRESS	PL 100-418 SEC 3005	VOL. III
ECONOMIC SUPPORT FUND ADMINISTRATION OF JUSTICE ASSISTANCE IN SUPPORT OF	PL 87-195 SEC 534	VOL. I
ADMINISTRATION OF JUSTICE		

		PAGE
ECONOMIC SUPPORT FUND--CONTINUED		
PROGRAM		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
AFGHANISTAN	PL 99-83 SEC 904	VOL. I
AFRICA	PL 99-83 SEC 801	VOL. I
AFRICA, SUB-SAHARAN		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
ASIA AND NEAR EAST REGIONAL		
PROGRAM		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
AUTHORITY	PL 87-195 SEC 531	VOL. I
AUTHORIZATION OF		
APPROPRIATIONS	PL 87-195 SEC 532	VOL. I
CASH TRANSFERS		
RESTRICTIONS ON	PL 100-202 TITLE II	VOL. I
	PL 100-461 TITLE II	VOL. I
COMMODITY IMPORT PROGRAM		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
COMMODITY IMPORT PROGRAM		
MINIMUM ALLOWANCE FOR	PL 97-113 SEC 203	VOL. I
COSTA RICA		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
CYPRUS	PL 99-83 SEC 203	VOL. I
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
EGYPT	PL 95-92 SEC 9	VOL. I
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
EL SALVADOR		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
EMERGENCY ASSISTANCE	PL 87-195 SEC 533	VOL. I
EXPORT-IMPORT BANK		
TIED AID CREDIT		
PROGRAM	PL 98-181 SEC 641-647	VOL. III
FUNDS AVAILABLE FOR		
MINORITY ENTERPRISES	PL 99-83 SEC 315	VOL. I
GUATEMALA		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
HONDURAS		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
IRELAND		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
ISRAEL	PL 99-83 SEC 202	VOL. I
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
JORDAN	PL 99-88 SEC 402	VOL. I
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
MIDDLE EAST	PL 99-83 SEC 202	VOL. I
MOROCCO		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
NICARAGUA		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
NUCLEAR FACILITIES		
RESTRICTIONS ON		
FUNDING	PL 99-83 SEC 207	VOL. I
PAKISTAN		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
PHILIPPINES		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
POLAND		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
PORTUGAL	PL 99-83 SEC 204	VOL. I
SOUTH AFRICANS		
DISADVANTAGED	PL 87-195 SEC 535	VOL. I
SOUTHERN AFRICA	PL 99-83 SEC 802	VOL. I
TIED AID CREDITS		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
TUNISIA	PL 99-83 SEC 805	VOL. I
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
TURKEY		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
FY 1979 SUPPLEMENTAL		
AUTHORIZATION	PL 96-92 SEC 27	VOL. I
WEST BANK AND GAZA		
DEVELOPMENT PROGRAM		
APPROPRIATIONS, 1988--	PL 100-202 TITLE II	VOL. I

		PAGE
ECONOMIC SUPPORT FUND--CONTINUED		
WEST BANK AND GAZA PROGRAM		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
ZAIRE	PL 99-83 SEC 804	VOL. I
EDUCATION		
FOREIGN AID	PL 87-195 SEC 105	VOL. I
SCHOOLS (ABROAD)		
SPONSORED BY U.S.	PL 87-195 SEC 214	VOL. I
U.N. UNIVERSITY ENDOWMENT FUND		
U.S. CONTRIBUTIONS TO	PL 94-141 SEC 205	VOL. II
EDUCATION, SECRETARY OF		
EDUCATIONAL AND CULTURAL EXCHANGE FUNCTIONS	EO 11034 SEC 4	VOL. II
REFUGEE RELIEF		
AUTHORITY OVER	EO 11077 SEC 2-3	VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE		
(SEE ALSO EAST-WEST CENTER)		
(SEE ALSO EXPOSITIONS)		
(SEE ALSO JAPAN-U.S. RELATIONS)		
(SEE ALSO USIA)		
ADMINISTRATION	EO 11034	VOL. II
	PL 87-256 SEC 104	VOL. II
ADVISORY COMMISSION	EO 11034 SEC 7	VOL. II
ARTS		
COMMITTEE ON	PL 87-256 SEC 106	VOL. II
AUTHORIZATION OF APPROPRIATIONS	PL 99-93 SEC 204	VOL. II
BEIRUT AGREEMENT OF 1949		
U.S. IMPLEMENTATION	EO 11311	VOL. II
CENTRAL AMERICAN UNDERGRADUATE SCHOLARSHIP PROGRAM	PL 99-93 SEC 612	VOL. II
EXCHANGE VISITOR PROGRAM		
AU PAIR PROVISION	S 2757 TITLE III	VOL. II
EXCHANGE-OF-PERSONS PROGRAM	PL 97-241 SEC 305	VOL. II
EXHIBITIONS		
IMPORTING MATERIALS FOR	EO 12047	VOL. II
FASCELL FELLOWSHIP PROGRAM	PL 99-399 TITLE X	VOL. II
FEDERAL EMPLOYEE PARTICIPATION	PL 87-256 SEC 108A	VOL. II
FOREIGN CURRENCIES	PL 87-195 SEC 612	VOL. I
FOREIGN CURRENCIES FROM AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 104(B)(2)	VOL. I
FOREIGN CURRENCIES FROM ARMS SALES	PL 87-195 SEC 505	VOL. I
FOREIGN PARTICIPANTS		
COMPENSATION	PL 84-885 SEC 12	VOL. II
FOREIGN SCHOLARSHIPS, BOARD OF	EO 11034 SEC 7	VOL. II
FULBRIGHT PROGRAM		
AUTHORIZATION, 1984-85	PL 98-164 SEC 206	VOL. II
HUMPHREY FELLOWSHIP PROGRAM	PL 87-256 SEC 112(A)(2)	VOL. II
AUTHORIZATION, 1984-85	PL 98-164 SEC 206	VOL. II
IMPORTING MATERIALS		
AUTHORITY OVER	EO 12047	VOL. II
JUDICIAL DETERMINATION	PL 89-259	VOL. II
USIA ROLE	EO 11311	VOL. II
INDIA FUND FOR	PL 98-164 SEC 901	VOL. II
INTERNATIONAL AGREEMENTS	PL 87-256 SEC 103	VOL. II
INTERNATIONAL COMMISSIONS	PL 87-256 SEC 104	VOL. II
INTERNATIONAL VISITOR PROGRAM	PL 98-164 SEC 206	VOL. II
JAPAN-U.S.	PL 94-118	VOL. II
LIBRARIES OVERSEAS		
AUTHORIZATION, 1984	PL 98-164 SEC 206	VOL. II
PAN AMERICAN GAMES	PL 94-350 SEC 110	VOL. II
PERSONNEL		
FOREIGN SERVICE BENEFITS	EO 11034 SEC 5	VOL. II
PRIVATE SECTOR PROGRAM		
AUTHORIZATION, 1984	PL 98-164 SEC 206	VOL. II
PROGRAMS AUTHORIZED	PL 87-256 SEC 102	VOL. II
PROHIBITIONS ON		
WAIVER OF	EO 11034 SEC 8	VOL. II
PURPOSE OF	PL 87-256 SEC 101	VOL. II
STRENGTHENING U.S. PROGRAMS	PL 95-105 SEC 107	VOL. II
U. S. SCHOLARSHIP PROGRAM FOR DEVELOPING COUNTRIES	PL 99-93 SEC 601	VOL. II
USIA	EO 12048	VOL. II
EDUCATIONAL, SCIENTIFIC, AND CULTURAL COOPERATION, COMMISSION ON	PL 98-164 SEC 106	VOL. II
EDWARD ZORINSKY MEMORIAL LIBRARY	PL 100-204 SEC 306	VOL. II

		PAGE
EEC		
TRADE AGREEMENTS	PL 93-618 SEC 126	VOL. III
EEC-U.S. RELATIONS		
FISHERY AGREEMENTS	PL 98-623 TITLE I	41
EGYPT		
AIRPORT SECURITY EQUIPMENT AND COMMODITIES ASSISTANCE	PL 99-399 SEC 508	VOL. II
ECONOMIC CONDITIONS		
IMPACT ON FOREIGN DEBT	PL 99-83 SEC 1205	VOL. I
ECONOMIC SUPPORT FUND	PL 99-83 SEC 202	VOL. I
SINAI FIELD MISSION FACILITIES TRANSFER	PL 96-35 SEC 6	VOL. I
EGYPT-ISRAEL RELATIONS		
PEACE PROCESS	PL 99-83 SEC 1210	VOL. I
EGYPT-U.S. RELATIONS		
AID, 1989	PL 100-461 TITLE II	VOL. I
ARMS SALES	PL 99-83 SEC 101(D)	VOL. I
CAMP DAVID ACCORDS CONTINUED PARTICIPATION OF EGYPT	PL 100-461 TITLE II	VOL. I
ECONOMIC SUPPORT FUND	PL 95-92 SEC 9	VOL. I
PEACE NEGOTIATIONS	PL 95-384 SEC 28	VOL. I
EL SALVADOR		
CONFLICT SETTLEMENT REPORT TO CONGRESS	PL 100-461 SEC 556	VOL. I
IMF ASSISTANCE TO PRIVATE SECTOR	PL 79-171 SEC 38	VOL. III
EL SALVADOR-U.S. RELATIONS		
AID 1989	PL 100-461 TITLE II	VOL. I
AID, 1989 CONDITIONS FOR	PL 100-461 SEC 539	VOL. I
DEPARTURE OF SALVADORANS IN U.S. EXTENSION OF	PL 98-164 SEC 1012	VOL. II
ESF		
PROVISION FOR USE	PL 100-461 SEC 591	VOL. I
FOREIGN AID	PL 99-83 SEC 702	VOL. I
SUSPENSION OF	PL 99-83 SEC 702(G)	VOL. I
MILITARY AID, 1984 CONDITIONS FOR	PL 98-151 SEC 101(B)(2)	VOL. I
MURDER OF U.S. CITIZENS SPECIAL INVESTIGATION	PL 100-461 TITLE II	VOL. I
POLICE TRAINING		
FOREIGN AID FOR	PL 87-195 SEC 660(D)	VOL. I
REFUGEE RELIEF	PL 87-195 SEC 4951	VOL. I
	PL 97-113 SEC 731	VOL. I
	PL 98-164 SEC 111	VOL. II
REPORT TO CONGRESS	PL 97-113 SEC 729	VOL. I
U.S. AID CONDITIONS ON	PL 97-113 SEC 727-730	VOL. I
ELECTIONS (U.S.)		
FOREIGN AGENTS' CAMPAIGN CONTRIBUTIONS	PL 75-583 SEC 2	527
	PL 89-486 FN	538
EMBARGOES		
(SEE ALSO EXPORT CONTROLS)		
FOOD PROTECTION FOR	PL 97-98 SEC 1204-1205	VOL. I
SOUTH AFRICA VIOLATIONS BY OTHER COUNTRIES	PL 99-440 TITLE V	VOL. III
EMBASSIES		
(SEE FOREIGN SERVICE BUILDINGS ACT OF 1926)		
EMERGENCIES (NATIONAL)		
(SEE NATIONAL EMERGENCY)		
EMERGENCY FOOD ASSISTANCE FUND, PRESIDENT'S	PL 98-473 SEC 303	VOL. I
EMERGENCY SECURITY ASSISTANCE ACT OF 1973	PL 93-199	VOL. I
EMIGRATION		
(SEE IMMIGRATION, FOREIGN)		
EMPLOYEE-MANAGEMENT RELATIONS		
(SEE FOREIGN SERVICE)		
EMPLOYEE-MANAGEMENT RELATIONS COMMISSIONS		
(SEE FOREIGN SERVICE)		
ENDANGERED SPECIES		
AFRICAN ELEPHANTS CONSERVATION ASSISTANCE	PL 100-478 SEC 2101	391
ALASKA NATIVES' USE OF	PL 93-205 SEC 10(E)	207
CONVENTION ON	PL 93-205 SEC 8	199
DEFINED	PL 93-205 SEC 3(6)	197
ECONOMIC HARDSHIP	PL 93-205 SEC 10(B)	206
EXEMPTION POLICY OF U.S. GOVERNMENT	PL 93-205 SEC 10	205
FOREIGN AID	PL 87-195 SEC 119	VOL. I

				PAGE
ENDANGERED SPECIES--CONTINUED				
FOREIGN CURRENCIES USED TO PROTECT	PL 93-205	SEC 8		199
INTERNATIONAL COOPERATION	PL 93-205	SEC 8		199
STATE DEPARTMENT PERSONNEL	PL 93-205	SEC 8		199
MARINE MAMMALS				
APPROPRIATION AUTHORIZATION	PL 92-522	SEC 207		227
COMMISSION DUTIES	PL 92-522	SEC 202		225
COMMISSION ESTABLISHED	PL 92-522	SEC 201		224
CONGRESSIONAL FINDINGS	PL 92-522	SEC 2		214
FISHING RESTRICTIONS	PL 92-522	SEC 101-102		215
IMPORT RESTRICTIONS	PL 92-522	SEC 101-102		215
INTERNATIONAL PROTECTION	PL 92-522	SEC 108		222
REPORTS TO CONGRESS	PL 92-522	SEC 204		227
PERMITS ISSUED BY SECRETARY OF INTERIOR	PL 93-205	SEC 10		205
PLANTS	PL 93-205	SEC 12		213
PROHIBITED ACTS	PL 93-205	SEC 9		201
SEALS, NORTH PACIFIC	PL 92-522	SEC 108(B)		223
SPECIES HELD IN CAPTIVITY	PL 93-205	SEC 9(B)		202
TRADE IN	PL 93-205	SEC 9(A)		201
DESIGNATED PORTS	PL 93-205	SEC 9(F)		205
REPORTS	PL 93-205	SEC 9(E)		204
WHALES				
AUTHORIZATION OF APPROPRIATIONS	PL 81-676	SEC 14		158
ENFORCEMENT OF REGULATIONS	PL 81-676	SEC 12		158
EQUIPMENT FOR CATCHING	PL 81-676	SEC 6		155
GUNNERS AND CREWS	PL 81-676	SEC 6		155
INTERAGENCY COOPERATION	PL 81-676	SEC 10		157
LICENSES	PL 81-676	SEC 6		155
MORATORIUM ON THE KILLING OF	PL 96-60	SEC 405		VOL. II
PENALTIES	PL 81-676	SEC 7-8		156
PROMULGATING REGULATIONS	PL 81-676	SEC 13		158
RECORDS	PL 81-676	SEC 7		156
SCIENTIFIC INVESTIGATIONS	PL 81-676	SEC 11		157
SEARCHES AND ARRESTS	PL 81-676	SEC 9		156
WARRANTS, ISSUANCE OF	PL 81-676	SEC 9		156
ENDANGERED SPECIES ACT OF 1973	PL 93-205			195
PURPOSE OF	PL 93-205	SEC 2		195
ENERGY (SOLAR)				
FOREIGN BUILDINGS	PL 95-426	SEC 105		VOL. II
ENERGY				
(SEE ALSO INTERNATIONAL ENERGY PROGRAM)				
AID TO LESS-DEVELOPED COUNTRIES	PL 95-242	SEC 501-503		325
ALTERNATE CONFERENCE ON	PL 95-426	SEC 609		VOL. II
COORDINATION OF ACTIVITIES	EO 12083			343
DOMESTIC RENEWABLE ENERGY INDUSTRY	PL 94-163	SEC 256		360
EMERGENCY PREPAREDNESS	PL 94-163	SEC 271-272		362
EXPORT OF				
REPORTS TO CONGRESS	PL 94-163	SEC 103(F)		350
RESTRICTIONS	PL 94-163	SEC 103		349
IADB				
REPORT TO CONGRESS	PL 96-259	SEC 102		VOL. III
INTERNATIONAL ENERGY SUPPLY EMERGENCY				
DEFINED	PL 94-152	SEC 3		338
	PL 94-163	SEC 252(K)(1)		355
INTERNATIONAL VOLUNTARY AGREEMENTS	PL 94-163	SEC 252		351
APPLICABILITY OF DEFENSES UNDER SUBSECTION (F) AND (J)	PL 94-163	SEC 252(4)		355
ATTORNEY GENERAL APPROVAL OF	PL 94-163	SEC 252(D)		353
MEETINGS	PL 94-163	SEC 252(C)		351
REPORTS TO CONGRESS	PL 94-163	SEC 252(I)		355
RULES GOVERNING	PL 94-163	SEC 252(E)		353
SUBMISSION OF	PL 94-163	SEC 252(D)		353
NATURAL GAS				
INTERNATIONAL AGREEMENTS ON	PL 98-164	SEC 1009		VOL. II
POLICY ON				
COOPERATION BETWEEN U.S. AND WESTERN HEMISPHERE COUNTRIES	PL 100-373			385

			PAGE
ENERGY--CONTINUED			
PRESIDENTIAL ACTIONS			
CONGRESSIONAL REVIEW OF	PL 94-163	SEC 551	365
PRESIDENTIAL STANDBY AUTHORITY OVER	PL 94-163	SEC 2	347
RENEWABLE	PL 94-163	SEC 256	360
MDBS	PL 96-259	SEC 601-602	VOL. III
U.S. MANAGEMENT OF	PL 94-163	SEC 2	347
VOLUNTARY AGREEMENTS	PL 94-152	SEC 3	338
ENERGY COORDINATING COMMITTEE	EO 12083		343
ENERGY EMERGENCY PREPAREDNESS ACT OF 1982	PL 97-229		374
ENERGY POLICY AND CONSERVATION ACT	PL 94-163		347
ENFORCEMENT OF	PL 94-163	SEC 525	364
RELATIONSHIP TO INTERNATIONAL ENERGY AGREEMENT	PL 94-163	SEC 255	360
ENERGY, DEPARTMENT OF			
FOREIGN AID	PL 87-195	SEC 106(C)	VOL. I
INTELLIGENCE RESPONSIBILITIES	EO 12333	SEC 1.13	VOL. II
ENVIRONMENT			
(SEE ALSO ENDANGERED SPECIES)			
(SEE ALSO POLLUTION)			
ACID RAIN	PL 98-164	SEC 1008	VOL. II
ALASKAN PIPELINE EFFECTS	PL 93-153	SEC 301	345
COASTAL			
DEFINED	PL 93-627	SEC 3(6)	101
CONSERVATION			
DEFINED	PL 93-205	SEC 3(3)	197
DEEPWATER PORTS	PL 93-627	SEC 2(A)	100
DEVELOPMENTAL PROGRAMS			
U.S. POLICIES TOWARD	PL 100-461	SEC 535	VOL. I
GLOBAL CLIMATE PROTECTION			
U.S. POLICY	PL 100-204	SEC 1103	383
INTERNATIONAL EXCHANGES	PL 98-164	SEC 703(B)	379
LESS DEVELOPED COUNTRIES	PL 87-195	SEC 117	VOL. I
MARINE			
DEFINED	PL 93-627	SEC 3(13)	102
MDBS			
PROMOTING SAFEGUARDS	PL 95-118	SEC 1301-1307	VOL. III
MONITORING GLOBAL CHANGES			
INTERNATIONAL COOPERATION	PL 100-685	SEC 411	415
SECRETARY OF STATE	EO 11742		VOL. II
DELEGATION OF AUTHORITY	EO 11742		337
STATE DEPARTMENT BUREAU ON	PL 93-126	SEC 9	VOL. II
U.N. ENVIRONMENT FUND			
U.S. CONTRIBUTIONS TO	PL 93-188		VOL. II
WILDLIFE RESOURCES			
INTERNATIONAL CONSERVATION ACTIVITIES	PL 98-164	SEC 704	379
EQUITORIAL GUINEA-U.S. RELATIONS			
FOREIGN AID	PL 96-533	SEC 314	VOL. I
ESPIONAGE, FOREIGN			
ACTIVITIES IN THE U.S.			
REPORT TO CONGRESS	PL 99-661	SEC 1364	VOL. I
ETHIOPIA			
FORCED RESETTLEMENT OR VILLAGIZATION PROGRAMS			
AID PROHIBITION	PL 100-461	SEC 542	VOL. I
ETHIOPIA-U.S. RELATIONS			
ECONOMIC SANCTIONS AGAINST	PL 100-456	SEC 1310	VOL. I
FAMINE			
RESPONSE BY ETHIOPIA	PL 99-83	SEC 812	VOL. I
FOREIGN AID			
PROHIBITION ON	PL 99-83	SEC 812	VOL. I
EURATOM			
U.S. COOPERATION WITH	EO 12629		305
EURATOM COOPERATION ACT OF 1958	PL 85-846		300
EURATOM RESOLUTION	S CON RES 85-116		304
EUROPE			
U.S. MILITARY IN	PL 93-365	SEC 302	VOL. I
EUROPE-U.S. RELATIONS			
(SEE ALSO SECURITY AND COOPERATION IN EUROPE, COMMISSION ON)			
AIR DEFENSE OF U.S. MILITARY BASES	PL 98-525	SEC 105	VOL. I
EUROPEAN COMMUNITIES			
TRADE			
GATT VIOLATIONS	PL 99-198	SEC 1164	VOL. I
EUROPEAN COMMUNITIES,			

		PAGE
COMMISSION OF THE PRIVILEGES AND IMMUNITIES	PL 92-499	VOL. II
EUROPEAN ECONOMIC COMMUNITY (SEE EEC)		
EUROPEAN SPACE AGENCY PRIVILEGES AND IMMUNITIES	PL 79-291 SEC 11	VOL. II
EUROPEAN-U.S. RELATIONS		
EURATOM	PL 85-846	300
U.S. APPROVAL	S CON RES 85-116	304
EXAMINATIONS		
FOREIGN SERVICE (SEE FOREIGN SERVICE, BOARD OF EXAMINERS)		
FOREIGN SERVICE ADMISSION	PL 96-465 SEC 211	VOL. II
EXCHANGE (SEE EDUCATIONAL AND CULTURAL EXCHANGE)		
EXCHANGE RATE		
BILATERAL AND MULTILATERAL NEGOTIATIONS	PL 100-418 SEC 3004	VOL. III
REPORT TO CONGRESS	PL 100-418 SEC 3005	VOL. III
EXCHANGE RATES AND INTERNATIONAL ECONOMIC POLICY COORDINATION ACT OF 1988	PL 100-418 SEC 3001	VOL. III
EXECUTIVE AGENCIES		
STATE DEPARTMENT PERSONNEL ASSIGNED TO	PL 93-126 SEC 11	VOL. II
EXECUTIVE AGREEMENTS (SEE EXECUTIVE-LEGISLATIVE RELATIONS)		
EXECUTIVE-LEGISLATIVE RELATIONS (SEE ALSO WAR POWERS)		
ARMS SALES	PL 90-629 SEC 36(B)	VOL. I
ENERGY ACTIONS	PL 94-163 SEC 551	365
INFORMATION SHARING	PL 95-426 SEC 122	VOL. II
INTERNATIONAL AGREEMENTS		
COORDINATION OF	22 CFR 181	VOL. II
TRANSMITTAL OF	PL 92-403	VOL. II
	PL 93-618 SEC 102	VOL. III
TRANSMITTAL TO CONGRESS	PL 93-618 SEC 162	VOL. III
MDBS	PL 95-118 SEC 1201	VOL. III
NATIONAL EMERGENCY	PL 95-223 SEC 204	VOL. III
EXHIBITIONS (SEE EDUCATIONAL AND CULTURAL EXCHANGE) (SEE USIA)		
EXPORT ADMINISTRATION ACT OF 1979	PL 96-72 SEC 1	VOL. III
APPROPRIATIONS AUTHORIZATION	PL 96-72 SEC 18	VOL. III
DELEGATION OF FUNCTIONS	EO 12214	VOL. III
EXPIRATION OF	PL 96-72 SEC 20	VOL. III
EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985	PL 99-64	VOL. III
EXPORT CONTROLS		
ADMINISTRATION OF	EO 12002	VOL. III
ADMINISTRATIVE AND REGULATORY AUTHORITY	PL 96-72 SEC 15	VOL. III
ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW	PL 96-72 SEC 13	VOL. III
AGRICULTURAL COMMODITIES	PL 96-72 SEC 7(G)	VOL. III
PROTECTION FOR	PL 97-98 SEC 1204-1205	VOL. I
ALASKAN OIL	PL 99-64 SEC 126	VOL. III
ARMS SALES	PL 90-629	VOL. I
BARTER AGREEMENTS	PL 96-72 SEC 7(H)	VOL. III
BOYCOTTS (FOREIGN)		
U.S. PERSON PARTICIPATION IN	PL 96-72 SEC 8	VOL. III
CONFIDENTIALITY REQUIREMENT	PL 96-72 SEC 12(C)	VOL. III
CONTROL LIST	PL 96-72 SEC 4(B)	VOL. III
COORDINATING COMMITTEE		
FACILITIES MODERNIZATION	PL 98-164 SEC 107	VOL. II
DELEGATION OF AUTHORITY	PL 96-72 SEC 4(E)	VOL. III
DELEGATION OF FUNCTIONS	EO 12214	VOL. III
ENDANGERED SPECIES	PL 93-205 SEC 9(D)	203
ENFORCEMENT OF		
GENERAL AUTHORITY FOR	PL 96-72 SEC 12	VOL. III
EXERCISE OF IN THE EVENT OF AGGRESION AGAINST POLAND	PL 97-145 SEC 7	VOL. III
EXPANDED AUTHORITY OF THE PRESIDENT	PL 96-72 SEC 6(O)	VOL. III
EXPORT CONTROL REVIEW BOARD	EO 12002 SEC 3-4	VOL. III
FINDINGS OF CONGRESS	PL 96-72 SEC 2	VOL. III
FOOD	PL 96-72 SEC 6(G)	VOL. III
FOREIGN POLICY CONSIDERATIONS	PL 96-72 SEC 6	VOL. III
CONTROL LIST	PL 96-72 SEC 6(L)	VOL. III

			PAGE
EXPORT CONTROLS--CONTINUED			
EXISTING CONTRACTS AND LICENSES	PL 96-72	SEC 6(M)	VOL. III
REPORT TO CONGRESS	PL 96-72	SEC 6(E)	VOL. III
HARDSHIP RELIEF	PL 96-72	SEC 9	VOL. III
HORSES	PL 99-64	SEC 125	VOL. III
LICENSES	PL 96-72	SEC 4	VOL. III
PROCESSING APPLICATIONS	PL 96-72	SEC 10	VOL. III
REQUIREMENTS	PL 96-72	SEC 5(E)	VOL. III
MEDICAL SUPPLIES	PL 96-72	SEC 6(G)	VOL. III
MILITARILY CRITICAL TECHNOLOGIES	PL 96-72	SEC 5(D)	VOL. III
MULTILATERAL	PL 96-72	SEC 5(I)	VOL. III
NATIONAL SECURITY CONSIDERATIONS	PL 96-72	SEC 5	VOL. III
CONTROL LIST	PL 96-72	SEC 5(C)	VOL. III
NONPROLIFERATION CONTROLS	PL 96-72	SEC 17(D)	VOL. III
OIL DOMESTICALLY PRODUCED	PL 96-72	SEC 7(D)	VOL. III
PENALTIES FOR VIOLATING	PL 96-72	SEC 11	VOL. III
POLICY DECLARATION	PL 96-72	SEC 3	VOL. III
PRESIDENT'S EXPORT COUNCIL	EO 12131		VOL. III
REPORT TO CONGRESS	PL 96-72	SEC 14	VOL. III
RESTRICTED ITEMS FOREIGN AVAILABILITY OF	PL 96-72	SEC 5(F)	VOL. III
SECRETARY OF DEFENSE	PL 96-72	SEC 4(E)	VOL. III
SHORT SUPPLY	PL 96-72	SEC 7	VOL. III
TECHNICAL ADVISORY COMMITTEES	PL 96-72	SEC 5(H)	VOL. III
TERMINATION OF EMERGENCY AUTHORITY	EO 12525		VOL. III
TERRORISM COUNTRIES SUPPORTING	PL 96-72	SEC 6(J)	VOL. III
U.S. INTERNATIONAL OBLIGATIONS	PL 96-72	SEC 6(I)	VOL. III
EXPORT CONTROLS, COORDINATING COMMITTEE ON	PL 98-164	SEC 107	VOL. II
EXPORT ENHANCEMENT ACT OF 1988	PL 100-418	SEC 2001	VOL. III
EXPORT EXPANSION ADVISORY COMMITTEE			
ESTABLISHMENT OF	EO 11420	SEC 1	VOL. III
FUNCTIONS	EO 11420	SEC 2	VOL. III
MEMBERSHIP	EO 11420	SEC 1	VOL. III
EXPORT TRADING COMPANY ACT OF 1982	PL 97-290		VOL. III
EXPORT-IMPORT BANK			
ADVISORY COMMITTEE	PL 79-173	SEC 3(D)	VOL. III
ARMS SALES CREDIT PROHIBITED FOR	PL 90-629	SEC 32	VOL. I
ASSISTANCE ADVERSELY AFFECTING THE U.S.	PL 79-173	SEC 2(E)	VOL. III
BOARD OF DIRECTORS	PL 79-173	SEC 3(C)	VOL. III
CAPITAL STOCK LEVEL OF	PL 79-173	SEC 14	VOL. III
SUBSCRIPTIONS OF	PL 79-173	SEC 4	VOL. III
COMMODITY CREDIT CORPORATION	PL 79-173	SEC 2(B)(8)	VOL. III
COMMUNIST COUNTRIES	PL 79-173	SEC 2(B)	VOL. III
CONFLICTS OF INTEREST	PL 79-173	SEC 3(E)	VOL. III
CREDIT COMPETITION	PL 95-630	SEC 1908	VOL. III
ECONOMIC IMPACT IN U.S.	PL 79-173	SEC 2(B)(1)	VOL. III
FINANCIAL INSTITUTIONS AS AGENTS OF	PL 79-173	SEC 2(C)(2)	VOL. III
FINANCING LIMITATION ON	PL 90-390	SEC 1(B)	VOL. III
FINANCING BY LIMITATIONS ON	PL 87-195	SEC 632	VOL. I
FINANCING DEFENSE ARTICLES OR SERVICES PROHIBITION AGAINST	PL 90-390	SEC 5	VOL. III
FOREIGN CREDIT INSURANCE ASSOCIATION	PL 79-173	SEC 2(B)(1)(F)	VOL. III
FUNCTIONING UNTIL 1992	PL 79-173	SEC 8	VOL. III
LIMITATION ON ADMINISTRATIVE EXPENSES, 1988	PL 100-202	TITLE IV	VOL. I
LIMITATIONS ON	PL 79-173	SEC 7	VOL. III
LOSSES	PL 90-390	SEC 2	VOL. III
COVERED BY SECRETARY OF TREASURY	PL 90-390	SEC 2-3	VOL. III
REIMBURSEMENT OF	PL 90-390	SEC 2	VOL. III
NEGOTIATIONS ON EXPORT FINANCING REPORT TO CONGRESS	PL 97-35	SEC 381	VOL. III
OBLIGATIONS	PL 79-173	SEC 6	VOL. III
OFFICERS	PL 79-173	SEC 3	VOL. III
ORGANIZATION	PL 79-173	SEC 3	VOL. III

			PAGE
EXPORT-IMPORT BANK--CONTINUED			
PAYMENT OF RECONSTRUCTION FINANCE CORPORATION	PL 79-173	SEC 4,5	VOL. III
PREDECESSOR CORPORATION	PL 79-173	SEC 12	VOL. III
PRESIDENTIAL DETERMINATIONS ON CREDIT PROHIBITIONS	PL 79-173	SEC 2(B)(3-6)	VOL. III
PROGRAM LIMITATION, 1988	PL 100-202	TITLE IV	VOL. I
PROGRAM LIMITATION, 1989	PL 100-461	TITLE IV	VOL. I
PURPOSES	PL 79-173	SEC 2(A)(1)	VOL. III
REPAYMENT TO	PL 90-390	SEC 1(A)	VOL. III
REPORTS TO CONGRESS	PL 79-173	SEC 2(B)(1)	VOL. III
SALE OF BANK LOANS	PL 79-173	SEC 16(C)	VOL. III
RESTRICTIONS ON CREDIT	PL 79-173	SEC 2(B)(3-5)	VOL. III
SALE OF LOANS TO PUBLIC	PL 79-173	SEC 16	VOL. III
SERVICES			
EXPORT OF	PL 79-173	SEC 2(B)(1)(J)	VOL. III
SMALL BUSINESSES	PL 79-173	SEC 2(B)	VOL. III
REPORT ON	PL 79-173	SEC 9(C)	VOL. III
SOUTH AFRICA	PL 79-173	SEC 2(B)(9)	VOL. III
SPECIAL FACILITIES			
BRAZIL AND MEXICO	PL 79-173	SEC 13	VOL. III
STATE, SECRETARY OF			
AUTHORITY DELEGATED TO	EO 12166		VOL. III
SUPPORTED BY FULL FAITH AND CREDIT OF U.S.	PL 90-390	SEC 2	VOL. III
TIED-AID CREDIT PROGRAM	PL 98-181	SEC 641-647	VOL. III
TRANSACTIONS SUPPORTED	PL 90-390	SEC 1(A)	VOL. III
EXPORT-IMPORT BANK ACT AMENDMENTS OF 1978	PL 95-630		VOL. III
EXPORT-IMPORT BANK ACT AMENDMENTS OF 1983	PL 98-181	TITLE VI	VOL. III
EXPORT-IMPORT BANK ACT OF 1945-	PL 79-173		VOL. III
INTERPRETATION	PL 90-390	SEC 4	VOL. III
EXPORT-IMPORT BANK AND TIED AID CREDIT AMENDMENTS OF 1988	PL 100-418	SEC 3301	VOL. III
EXPORTS			
(SEE ALSO ANTIDUMPING)			
(SEE ALSO TRADE)			
AGRICULTURAL COMMODITIES			
CREDITS	PL 99-198	SEC 1125	VOL. I
EXPANDING U.S. MARKETS	PL 99-198	SEC 1127	VOL. I
FOREIGN EXCHANGE RISKS	PL 99-198	SEC 1134	VOL. I
PROGRAMS IMPACTING ON-	PL 99-198	SEC 1162	VOL. I
PROMOTION OF	PL 95-501		VOL. I
	PL 97-253	SEC 135	VOL. I
SUBSIDIES	PL 99-198	SEC 1123	VOL. I
TO CHINA (PEOPLE'S REPUBLIC OF)	PL 99-198	SEC 1106	VOL. I
TRADE ASSISTANCE OFFICE	PL 100-418	SEC 4206	VOL. I
U.S. POLICY	PL 99-198	SEC 1121	VOL. I
AGRICULTURAL COMMODITY SALES			
DAIRY PRODUCTS	PL 99-198	SEC 1163	VOL. I
COMPETITION WITH U.S.			
AID PROHIBITION	PL 100-461	SEC 549	VOL. I
FISH			
PROMOTION OF	PL 96-561	SEC 211	175
INCENTIVES PROGRAM	PL 81-439	SEC 107F	VOL. I
MARKET DEVELOPMENT COOPERATOR PROGRAM			
ESTABLISHMENT OF	PL 100-418	SEC 2303	VOL. III
MDBS			
COMMERCIAL SERVICE OFFICERS	PL 100-418	SEC 2302	VOL. III
OPPORTUNITIES FOR U.S.	PL 96-259	SEC 401	VOL. III
MILITARY TECHNOLOGY	PL 93-365	SEC 709	VOL. I
NATIONAL SECURITY			
PROTECTION OF	PL 100-418	SEC 2433	VOL. III
NATIONAL SEMINAR ON SMALL BUSINESS EXPORTS	PL 100-418	SEC 8011	VOL. III
OFFSETS, IMPACT OF			
REPORT TO CONGRESS	50 USC 2099		VOL. III
OIL			
REVIEW OF RESTRICTIONS ON	PL 100-418	SEC 2424	VOL. III
PACIFIC RIM INITIATIVE	PL 100-418	SEC 2306	VOL. III
PROMOTING			
FOREIGN COMMERCIAL SERVICE	PL 100-418	SEC 2302	VOL. III
PROMOTION AND DISINCENTIVES			
REPORT TO CONGRESS	PL 96-39	SEC 1110	VOL. III
PROMOTION OF	PL 97-290		VOL. III
U.S. WINE	PL 98-573	SEC 907	VOL. III
PROMOTION PROGRAMS	PL 99-64	SEC 201	VOL. III
AUTHORIZATION OF			
APPROPRIATIONS	PL 100-418	SEC 2305	VOL. III
	PL 99-64	SEC 202	VOL. III
REDUCING U.S. TRADE DEFICIT	PL 100-418	SEC 3103	VOL. III

			PAGE
EXPORTS--CONTINUED			
SOUTH AFRICA			
PROHIBITIONS ON	PL 99-440	TITLE III	VOL. III
TO DEVELOPING COUNTRIES			
REPORT TO CONGRESS	PL 100-418	SEC 3303	VOL. III
TRADE CERTIFICATES OF			
REVIEW	PL 97-290	SEC 301	VOL. III
TRADE INJURIES			
TARIFF READJUSTMENT	PL 87-794		VOL. III
TRADE SHOWS			
FEDERAL ASSISTANCE FOR	PL 100-418	SEC 2304	VOL. III
TRADING COMPANIES	PL 97-290		VOL. III
REPORT TO CONGRESS	PL 100-418	SEC 2311	VOL. III
U.S. MADE AUTO PARTS TO			
JAPAN	PL 100-418	SEC 1934	VOL. III
WHEAT OR FEED GRAINS			
INCENTIVES	PL 81-439	SEC 107F	VOL. I
WOOD PRODUCTS			
TO PACIFIC RIM	PL 100-418	SEC 2432	VOL. III
EXPOSITIONS			
(SEE ALSO EDUCATIONAL AND CULTURAL EXCHANGE)			
AUTHORIZATION OF			
APPROPRIATIONS FOR	PL 91-269	SEC 8	VOL. II
JAPAN (TSUKUBA), 1985			
U.S. PARTICIPATION	PL 98-164	SEC 212	VOL. II
U.S. PARTICIPATION IN	PL 91-269	SEC 3	VOL. II
U.S. RECOGNITION OF	PL 91-269	SEC 2	VOL. II
	PL 91-269	SEC 5	VOL. II
EXPROPRIATION			
(SEE ALSO NATIONALIZATIONS)			
DEFINED	PL 87-195	SEC 238	VOL. I
F			
FAIR TRADE IN AUTO PARTS ACT OF 1988	PL 100-418	SEC 2121	VOL. III
FAMILY PLANNING			
(SEE POPULATION GROWTH)			
FAMINE			
ETHIOPIA			
FAILURE TO ADDRESS	PL 99-83	SEC 812	VOL. I
FAMINE RELIEF			
AFRICA			
AUTHORIZATION OF			
APPROPRIATIONS, 1985	PL 99-8		VOL. I
REPORT TO CONGRESS	PL 99-8	SEC 6	VOL. I
FAO			
FOOD RESERVES	PL 93-189	SEC 39	VOL. I
FASCELL FELLOWSHIP ACT	PL 99-399	TITLE X	VOL. II
FBI			
INTELLIGENCE			
RESPONSIBILITIES	EO 12333	SEC 1.14	VOL. II
FEDERAL COAL EXPORT COMMISSION	PL 99-83	SEC 1304	VOL. I
FEDERAL EMPLOYEES (U.S.)			
FORMER EMPLOYEES			
PREPUBLICATION REVIEW OF WRITINGS BY	PL 98-164	SEC 1010	VOL. II
FEDERAL RESERVE BANKS			
DEPOSITORIES FOR IMF	PL 79-171	SEC 6	VOL. III
DEPOSITORIES FOR WORLD BANK	PL 79-171	SEC 6	VOL. III
FEDERAL TRIANGLE DEVELOPMENT ACT	PL 100-113		VOL. III
FEDERAL-STATE JURISDICTION (U.S.)			
CRIMINAL CODE	PL 92-539	SEC 2	VOL. II
PROTECTION OVER FOREIGN OFFICIALS	PL 92-539	SEC 2	VOL. II
FEDERATED STATES OF MICRONESIA-U.S. RELATIONS			
COMPACT OF FREE ASSOCIATION			
IMPLEMENTATION OF	51 FR 40399		VOL. III
CONDUCT OF FOREIGN AFFAIRS	PL 99-239	TITLE ONE	VOL. III
FOREIGN AID	PL 99-239	TITLE TWO	VOL. III
FELLOWSHIPS			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
FERTILIZER			
INTERNATIONAL DEVELOPMENT CENTER FOR	PL 87-195	SEC 301(F)	VOL. I
FILMS			
(SEE USIA)			
FINANCIAL INSTITUTIONS (U.S.)			
FOREIGN TREATMENT OF			
REPORTS TO CONGRESS	PL 100-418	SEC 3602	VOL. III
FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF 1978	PL 95-630		VOL. III
FINANCIAL REPORTS ACT OF 1988	PL 100-418	SEC 3601	VOL. III

			PAGE
FINLAND			
DEBT PAYMENTS TO U.S.			
USE OF FUNDS	PL 87-256	SEC 105	VOL. II
FIRE			
WILDFIRE PROTECTION			
FOREIGN FIRE ORGANIZATIONS	PL 100-428		386
FISHERIES			
(SEE ALSO INTERNATIONAL COMMISSIONS)			
APPROPRIATIONS			
AUTHORIZATION	PL 94-265	SEC 406	31
CATACEAN	PL 95-426	SEC 602	VOL. II
CONSERVATION	PL 71-361	SEC 323	VOL. III
CONTINENTAL SHELF RESOURCES			
DEFINED	PL 94-265	SEC 3(4)	6
DEFINITIONS	PL 94-265	SEC 3	6
DRIFTNET FISHING			
ADVERSE IMPACT	PL 100-220	TITLE IV	177
REPORT TO CONGRESS	PL 100-220	SEC 4005	178
EXCLUSIVE ECONOMIC ZONE			
DEFINED	PL 94-265	SEC 3(6)	7
MANAGEMENT OF	PL 94-265	SEC 101	10
EXPORT PROMOTION	PL 96-561	SEC 211	175
FOREIGN FISHING	PL 94-265	SEC 201	10
PERMITS	PL 94-265	SEC 204	23
FOREIGN FISHING OBSERVER FUND	PL 96-339	SEC 2	135
GOVERNING INTERNATIONAL FISHERY AGREEMENTS			
DEFINED	PL 94-265	SEC 206	30
IMPORT PROHIBITIONS	PL 94-265	SEC 205	29
INTERNATIONAL AGREEMENTS	PL 94-265	SEC 202	20
CANADA-U.S.	PL 99-5		165
CONGRESSIONAL APPROVAL	PL 95-6		33
CONGRESSIONAL OVERSIGHT	PL 94-265	SEC 203	21
GERMAN DEMOCRATIC REPUBLIC	PL 100-350		44
ICELAND AND EEC	PL 98-623	TITLE I	41
JAPAN	PL 100-220	TITLE I	43
JAPAN AND SPAIN	PL 97-389	TITLE IV	40
KOREA	PL 100-66	SEC 1	42
PORTUGAL	PL 96-561	SEC 145	39
SOUTH PACIFIC	PL 100-330		142
SOVIET UNION	PL 100-629		45
TRANSITIONAL PROVISIONS	PL 94-265	SEC 206	30
INTERNATIONAL COMMISSIONS			
APPROPRIATIONS, 1989	PL 100-459	TITLE III	VOL. II
MANAGEMENT			
U.S. RIGHTS AND AUTHORITY	PL 94-265	SEC 101	10
MARINE MAMMALS			
(SEE ENDANGERED SPECIES, MARINE MAMMALS)			
NORTH PACIFIC			
ADMINISTRATION	PL 83-579	SEC 15	116
ADVISORY COMMITTEE	PL 83-579	SEC 4	107
AUTHORIZATION OF APPROPRIATIONS	PL 83-579	SEC 12	112
CANADA	PL 83-579	SEC 13	113
ENFORCEMENT OF PROHIBITIONS	PL 83-579	SEC 9	108
FEDERAL FACILITIES	PL 83-579	SEC 8	108
INTERNATIONAL COMMISSION	PL 83-579		106
JAPAN	PL 83-579	SEC 13	113
PENALTIES	PL 83-579	SEC 11	110
PUNISHABLE OFFENSES	PL 83-579	SEC 10	110
OBSERVER PROGRAM OF FOREIGN FISHING	PL 96-339	SEC 2	135
POLICY (U.S.)	PL 94-265	SEC 2	4
PURPOSES	PL 94-265	SEC 2	4
RECIPROCAL AGREEMENT WITH CANADA			
CONGRESSIONAL APPROVAL	PL 95-6	SEC 5	37
RESOURCE PRESERVATION	PL 95-426	SEC 602	VOL. II
SALMON, NORTH ATLANTIC	PL 97-389	TITLE III	161
SALMON, PACIFIC	PL 99-5		165
SEALS			
(SEE ENDANGERED SPECIES)			
SEIZURE OF U.S. VESSELS	PL 83-680		181
APPLICATION FOR COMPENSATION	PL 83-680	NOTE	194
FINES REIMBURSED	PL 83-680	SEC 3	182
FOREIGN AID CUT-OFF	PL 83-680	SEC 5	183

			PAGE
FISHERIES--CONTINUED			VOL. I
LOANS TO OWNERS	PL 87-195	SEC 620(D)	189
NO RETALIATION	PL 83-680	SEC 10	183
PROVISION OF PUBLIC LAW 92-569	PL 83-680	SEC 4-5	193
RELEASE OF	PL 83-680	NOTE	181
U.S. GUARANTEES FOR LOSSES	PL 83-680	SEC 2	184
SOUTH PACIFIC INTERNATIONAL AGREEMENTS	PL 100-330	SEC 7	142
SOUTH PACIFIC FISHING AGREEMENT PROHIBITED ACTS	PL 100-330	SEC 5	144
TRADE OFFICERS	PL 96-561	SEC 211	175
TUNA (SEE ALSO INTER-AMERICAN TROPICAL TUNA COMMISSION)			
EASTERN PACIFIC OCEAN TUNA FISHING AGREEMENT	PL 98-445		137
ENFORCEMENT AGENCIES	PL 81-764	SEC 10	121
ENFORCING REGULATIONS	PL 81-764	SEC 7	117
INSPECTING REPORTS	PL 81-764	SEC 7-8	117
INTERAGENCY COORDINATION	PL 81-764	SEC 9	118
PROMULGATING REGULATIONS	PL 81-764	SEC 6	115
PUNISHABLE OFFENSES	PL 81-764	SEC 8	117
SCIENTIFIC INVESTIGATIONS OF	PL 81-764	SEC 11	123
SEARCH AND ARREST WARRANTS	PL 81-764	SEC 10	121
SOUTH PACIFIC FISHING AGREEMENT	PL 100-330		142
U.S. ADVISORY COMMITTEE ON	PL 81-764	SEC 4	115
U.S. REGULATION	PL 81-764		117
TUNA, ATLANTIC			
ADMINISTRATION OF	PL 94-70	SEC 6	127
ENFORCEMENT	PL 94-70	SEC 8	131
REPORTS TO CONGRESS	PL 96-339	SEC 3	136
SECRETARY OF STATE AS LIASON	PL 94-70	SEC 5	126
U.S. ADVISORY COMMITTEE	PL 94-70	SEC 4	125
U.S. GOVERNMENT COOPERATION	PL 94-70	SEC 9	133
VIOLATIONS	PL 94-70	SEC 7	130
WHALES (SEE ENDANGERED SPECIES)			
FISHERMEN'S PROTECTIVE ACT OF 1967	PL 83-680		181
FISHERMEN'S PROTECTIVE FUND	PL 83-680	SEC 3-4	182
	PL 83-680	SEC 9	189
FISHERY CONSERVATION ZONE TRANSITION ACT	PL 95-6		33
FLORENCE AGREEMENT NAIROBI PROTOCOL IMPLEMENTATION OF	PL 100-418	SEC 1121	VOL. III
FOOD (PERISHABLE) INTERNATIONAL TRANSPORT OF	PL 97-325		VOL. I
FOOD (SEE ALSO AGRICULTURAL COMMODITY SALES) (SEE ALSO AGRICULTURE) (SEE ALSO FAO) (SEE ALSO FISHERIES) (SEE ALSO FOOD AID PROGRAM)			
EXPORT CONTROLS ON	PL 96-72	SEC 6(G)	VOL. III
INTERNATIONAL RESERVE	PL 95-426	SEC 604	VOL. II
WHEAT RESERVE	PL 96-494	TITLE III	VOL. I
ESTABLISHED	EO 12266		VOL. I
WORLD HUNGER CONGRESSIONAL FINDING ON	PL 97-113	SEC 712	VOL. I
WORLD SECURITY RESERVES	PL 97-113	SEC 711	VOL. I
FOOD AID	PL 87-195	SEC 103	VOL. I
AGRICULTURAL RESEARCH	PL 87-195	SEC 103A	VOL. I
	PL 87-195	SEC 296	VOL. I
INTERNATIONAL COOPERATION	PL 87-195	SEC 297	VOL. I
ASSISTANCE PROGRAMS AND POLICY	PL 99-198	SEC 1113	VOL. I
BOARD FOR INTERNATIONAL			

INTENTIONAL
BLANK

			PAGE
FOOD AID--CONTINUED			
FOOD AND AGRICULTURAL DEVELOPMENT	PL 87-195	SEC 298	VOL. I
DAIRY SURPLUS	PL 81-439	SEC 416(B)	VOL. I
DELEGATIONS OF AUTHORITY	EO 12583		VOL. I
DISTRIBUTION OF			
USING PVOS	PL 83-480	SEC 202(C)	VOL. I
WORLD FOOD PROGRAM	PL 83-480	SEC 201(B)	VOL. I
EXPORTERS (U.S.)	PL 95-501	SEC 201	VOL. I
HARVEST LOSSES	PL 96-533	SEC 317	VOL. I
IDA CRITERIA	PL 83-480	SEC 111	VOL. I
INTERNATIONAL FERTILIZER DEVELOPMENT CENTER			
U.S. PARTICIPATION	PL 87-195	SEC 301(F)	VOL. I
LONG-TERM AGRICULTURAL COMMODITY AGREEMENTS			
REPORT TO CONGRESS	PL 99-83	SEC 1008	VOL. I
MISSIONS TO FOREIGN COUNTRIES	PL 100-202	SEC 101(O)	VOL. I
PORTUGAL	PL 94-329	SEC 409	VOL. I
PRESIDENT'S EMERGENCY FOOD ASSISTANCE FUND	PL 98-473	SEC 303	VOL. I
PRIVATE VOLUNTARY ORGANIZATIONS	PL 96-533	SEC 316	VOL. I
PRODUCTION ASSESSMENT			
REPORTS TO CONGRESS	PL 83-480	SEC 408	VOL. I
REPORTS TO CONGRESS	PL 87-195	SEC 300	VOL. I
SPECIAL ASSISTANT TO THE PRESIDENT FOR AGRICULTURAL TRADE AND FOOD AID	PL 99-198	SEC 1113	VOL. I
U.S. POLICY	PL 83-480	SEC 2	VOL. I
WHEAT SURPLUS	PL 81-439	SEC 416(B)	VOL. I
WORLD FOOD CONFERENCE RECOMMENDATIONS			
U.S. CONTRIBUTIONS	PL 83-480	SEC 3	VOL. I
FOOD AID PROGRAM			
ASSISTANCE TO POOR COUNTRIES	H RES 1399		VOL. III
FOOD AND AGRICULTURAL ORGANIZATION (SEE FAO)			
FOOD AND AGRICULTURE ACT OF 1977	PL 95-113		VOL. I
FOOD FOR DEVELOPMENT PROGRAM	PL 83-480	SEC 301-307	VOL. I
ESTABLISHED	PL 83-480	SEC 301	VOL. I
FOOD FOR PEACE ACT OF 1966	PL 89-808		VOL. I
FOOD FOR PROGRESS ACT OF 1985	PL 99-198	SEC 1110	VOL. I
FOOD PRODUCTION			
FOREIGN AID	PL 93-559	SEC 55	VOL. I
FOOD SALES (SEE AGRICULTURAL COMMODITY SALES)			
FOOD SECURITY ACT OF 1985	PL 99-198		VOL. I
FOOD SECURITY WHEAT RESERVE	EO 12266		VOL. I
FOOD SECURITY WHEAT RESERVE ACT OF 1980	PL 96-494	TITLE III	VOL. I
FOOD SUPPLIES			
(SEE ALSO FOOD AID PROGRAM)			
ASSISTANCE TO POOR COUNTRIES	H RES 1399		VOL. III
DOMESTIC PRODUCTION LEVELS	PL 93-189	SEC 39	VOL. I
INTERNATIONAL EMERGENCY RESERVES	PL 81-439	SEC 111	VOL. I
INTERNATIONAL RESERVES	PL 95-105	SEC 510	VOL. II
U.N. CONFERENCE ON	PL 93-189	SEC 39	VOL. I
FOREIGN AGENTS REGISTRATION			
ACTIVITIES RECORDED	PL 75-583	SEC 5	534
ATTORNEY GENERAL	PL 75-583	SEC 2	527
ATTORNEY GENERAL PRIOR NOTIFICATION	18 USC 951		540
CAMPAIGN CONTRIBUTIONS	PL 75-583	SEC 2	527
	PL 89-486	FN	538
COMPENSATING AGENTS	PL 75-583	SEC 2	527
ENFORCEMENT	PL 75-583	SEC 8	535
FOREIGN GOVERNMENTS DEFINED	PL 75-583	SEC 1	523
FOREIGN PRINCIPAL DEFINED	PL 75-583	SEC 1	523
FOREIGN PROPAGANDA ON FILE	PL 75-583	SEC 4	532
LIABILITY OF OFFICERS	PL 75-583	SEC 7	535
PENALTIES FOR VIOLATIONS	PL 75-583	SEC 8	535
POLITICAL PROPAGANDA DEFINED	PL 75-583	SEC 1	523
PUBLIC INSPECTION OF STATEMENTS	PL 75-583	SEC 6	534
REGISTRATION STATEMENTS			
CORRECTING DEFICIENCIES	PL 75-583	SEC 8	535
DEADLINE FOR FILING	PL 75-583	SEC 2	527

			PAGE
FOREIGN AGENTS REGISTRATION--CONTINUED			
EXEMPTIONS	PL 75-583	SEC 2	527
	PL 75-583	SEC 3	531
INFORMATION REQUIRED	PL 75-583	SEC 2	527
SUPPLEMENTS TO	PL 75-583	SEC 2	527
REPORTS TO CONGRESS	PL 75-583	SEC 11	537
U.S. OFFICIALS	PL 89-486	SEC 8	538
FOREIGN AGENTS REGISTRATION ACT OF 1938	PL 75-583		523
FOREIGN AGRICULTURAL SERVICE			
APPROPRIATIONS, 1989	PL 100-460		VOL. I
FOREIGN AID			
(SEE ALSO AID)			
(SEE ALSO FOOD AID)			
(SEE ALSO HUMANITARIAN ASSISTANCE)			
(SEE ALSO OPIC)			
ADMINISTRATION OF	EO 12163		VOL. I
	PL 87-195	SEC 621-640C	VOL. I
ADVISORY COMMITTEE ON VOLUNTARY FOREIGN AID	PL 87-195	SEC 635	VOL. I
AFRICAN DEVELOPMENT FOUNDATION	PL 96-533	SEC 502	VOL. I
AGRICULTURE PROGRAM	PL 87-195	SEC 103	VOL. I
ALIEN EMPLOYEES	PL 87-195	SEC 635	VOL. I
ALLOCATION CHANGES	PL 87-195	SEC 653	VOL. I
ANTI-TERRORISM PROGRAM			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
ANTITERRORISM PROGRAM	PL 87-195	SEC 571-574	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
LIMITATIONS ON	PL 100-461	TITLE II	VOL. I
AUDITS	PL 87-195	SEC 624	VOL. I
AUTHORIZATION OF APPROPRIATIONS, 1984	PL 98-151	SEC 101(B)(2)	VOL. I
AUTHORIZATION REDUCTION FY 1979	PL 95-424	SEC 601	VOL. I
CHILDREN			
ASIA	PL 87-195	SEC 241	VOL. I
CHILE RESTRICTION	PL 94-161	SEC 320	VOL. I
COMMODITIES			
COORDINATING DISPOSITION OF	PL 81-439	SEC 416(B)	VOL. I
COMMUNIST COUNTRIES			
COUNTRIES SPECIFIED	PL 87-195	SEC 620(F)	VOL. I
CONSOLIDATION OF ACCOUNTS	PL 87-195	SEC 610	VOL. I
COST ESTIMATES	PL 87-195	SEC 611	VOL. I
COST-SHARING WITH FOREIGN COUNTRIES	PL 87-195	SEC 110	VOL. I
COUNTERPART FUNDS	PL 83-665	SEC 402	VOL. I
CUT-OFFS	PL 87-195	SEC 620	VOL. I
CYPRUS RELIEF	PL 87-195	SEC 495	VOL. I
DEBT BURDENS			
SELECTED COUNTRIES	PL 97-113	SEC 723	VOL. I
DELEGATION OF FUNCTIONS			
STATE DEPARTMENT	45 FR 11655		VOL. I
DEMOCRATIC INSTITUTIONS	PL 87-195	SEC 281	VOL. I
DEVELOPMENT COORDINATION COMMITTEE	EO 12163	SEC 1-506	VOL. I
DISASTER ASSISTANCE	PL 87-195	SEC 491	VOL. I
AFRICA	PL 87-195	SEC 495K	VOL. I
BORROWING AUTHORITY	PL 87-195	SEC 492(B)	VOL. I
COORDINATION FOR	PL 87-195	SEC 493	VOL. I
DISCRIMINATION AGAINST U.S. PERSONNEL	PL 87-195	SEC 666	VOL. I
DRUG PRODUCTION			
AID PROHIBITION	PL 87-195	SEC 481(H)	VOL. I
ECONOMIC SUPPORT FUND	PL 87-195	SEC 532	VOL. I
EDUCATION	PL 87-195	SEC 105	VOL. I
ENDANGERED SPECIES	PL 87-195	SEC 119	VOL. I
ENERGY PROGRAMS	PL 87-195	SEC 106(A)	VOL. I
ENVIRONMENT	PL 87-195	SEC 117	VOL. I
EVALUATION OF PROGRAM	PL 87-195	SEC 125	VOL. I
EXPORT-IMPORT BANK			
TIED AID CREDIT PROGRAM	PL 98-181	SEC 641-647	VOL. III
FOREIGN AID PROGRAM			
IMPLEMENTATION OF	EO 11223		VOL. I
FOREIGN CURRENCIES	PL 87-195	SEC 636	VOL. I
U.S. SECURITY	PL 87-195	SEC 614	VOL. I
FUNDS			
LIMIT ON OBLIGATIONS	PL 87-195	NOTE	VOL. I
TRANSFER BETWEEN PROGRAMS	PL 87-195	SEC 109	VOL. I
WITHOLDING OF	PL 87-195	SEC 307	VOL. I
HEALTH SERVICES	PL 87-195	SEC 104	VOL. I
HUMAN RIGHTS	PL 87-195	SEC 116	VOL. I
ASSISTANT SECRETARY OF STATE ESTABLISHED	PL 87-195	SEC 624(F)	VOL. I
INTER-AMERICAN COMMISSION	PL 87-195	SEC 302(A)(2)	VOL. I

			PAGE
FOREIGN AID--CONTINUED			
INCIDENTAL EXPENSES	PL 87-195	SEC 636	VOL. I
INFANT FEEDING PRACTICES	PL 97-113	SEC 301(B)	VOL. I
INSPECTION OF	EO 12066		VOL. I
INSPECTOR GENERAL	EO 12066		VOL. I
INTERNATIONAL ORGANIZATIONS	PL 87-195	SEC 301	VOL. I
REPORT TO CONGRESS	PL 87-195	SEC 306	VOL. I
ITALY RELIEF	PL 87-195	SEC 495B	VOL. I
LATIN AMERICA			
(SEE ALSO INTER-AMERICAN FOUNDATION)	PL 86-735	SEC 1	VOL. I
AGRICULTURE	PL 87-195	SEC 222A	VOL. I
U.S. POLICY	PL 86-735	SEC 1	VOL. I
LATIN AMERICA AND THE CARIBBEAN			
REPORTS TO CONGRESS	PL 99-83	SEC 709	VOL. I
LEAST DEVELOPED COUNTRIES			
EMPHASIS ON	PL 87-195	SEC 124	VOL. I
LEBANON	PL 98-43		VOL. I
LEBANON RELIEF	PL 87-195	SEC 495C	VOL. I
LOANS	PL 87-195	SEC 122	VOL. I
ACCELERATED REPAYMENT	PL 87-195	SEC 127	VOL. I
DEFAULTS ON	PL 93-559	SEC 56	VOL. I
REDUCING BILATERAL	PL 87-195	SEC 209	VOL. I
MANAGEMENT INNOVATIONS			
SYSTEMS ANALYSIS	PL 87-195	SEC 621A	VOL. I
MARXIST-LENINIST COUNTRIES			
PROHIBITION ON	PL 79-173	SEC 2(B)(2)	VOL. III
MIDDLE EAST	PL 85-7	SEC I	VOL. II
INTERNATIONAL			
CONTRIBUTIONS	PL 94-161	SEC 322	VOL. I
MINORITY BUSINESS			
PARTICIPATION	PL 95-88	SEC 133	VOL. I
MINORITY RESOURCE CENTER	PL 98-151	SEC 101(B)(2)	VOL. I
MINORITY SET-ASIDE	PL 98-151	SEC 101(B)(2)	VOL. I
NARCOTICS (ILLICIT)			
PRODUCTION	PL 87-195	SEC 126	VOL. I
NATURAL RESOURCES	PL 87-195	SEC 118	VOL. I
NOTIFICATION REQUIREMENTS	PL 100-461	SEC 523	VOL. I
NUCLEAR ENRICHMENT			
TRANSFERS			
SUSPENSION OF	PL 87-195	SEC 669	VOL. I
NUCLEAR REPROCESSING			
TRANSFERS			
TERMINATION OF AID	PL 87-195	SEC 670	VOL. I
OLYMPIC GAMES BOYCOTT	PL 96-533	SEC 718	VOL. I
PERSONNEL	PL 87-195	SEC 624-631	VOL. I
(SEE ALSO PEACE CORPS)			
ASSIGNMENTS	PL 87-195	SEC 627-630	VOL. I
CONSULTANTS	PL 87-195	SEC 626	VOL. I
OFFICERS	PL 87-195	SEC 624	VOL. I
OFFICIAL EXPENSES	PL 87-195	SEC 636	VOL. I
POLICE TRAINING PROHIBITED	PL 87-195	SEC 660	VOL. I
POLICY	PL 87-195	SEC 101-102	VOL. I
POLITICAL REPRESSION ABROAD	PL 93-189	SEC 32	VOL. I
POOR			
TARGET TO	PL 87-195	SEC 128	VOL. I
POPULATION PLANNING	PL 87-195	SEC 104	VOL. I
PRIVATE ORGANIZATIONS			
PARTICIPATION	PL 87-195	SEC 123	VOL. I
PRIVATE SECTOR REVOLVING			
FUND	PL 87-195	SEC 108	VOL. I
PROCUREMENT ABROAD	PL 87-195	SEC 604	VOL. I
PROCUREMENT FROM SMALL			
BUSINESSES	PL 94-329	SEC 602	VOL. I
PROGRAM CHANGES			
CONGRESSIONAL			
NOTIFICATION	PL 87-195	SEC 634A	VOL. I
PROVIDED THROUGH PVOS	PL 99-83	SEC 710	VOL. I
REAPPRAISAL OF	PL 90-554	PART V	VOL. I
RECIPIENT SUPPORT FOR U.S.			
POLICY			
REPORT TO CONGRESS	PL 100-461	SEC 527	VOL. I
REFUGEES			
AFRICAN	PL 87-195	SEC 495F	VOL. I
REPORTS TO CONGRESS	PL 87-195	SEC 634	VOL. I
REPROGRAMMING OF FUNDS	PL 87-195	SEC 634A	VOL. I
ROMANIAN RELIEF	PL 87-195	SEC 495D	VOL. I
RURAL DEVELOPMENT	PL 87-195	SEC 103	VOL. I
SAHEL DEVELOPMENT PROGRAM	PL 87-195	SEC 120-121	VOL. I
SCIENCE AND TECHNOLOGY			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
SECRETARY OF STATE	PL 87-195	SEC 622	VOL. I
SEIZURE OF U.S. FISHING			
VESSELS	PL 83-680	SEC 5	183
SELF-HELP DEVELOPMENT AID	PL 95-88	SEC 131	VOL. I
SPECIAL MISSIONS ABROAD	PL 87-195	SEC 631	VOL. I
SURPLUS PROPERTY			
REQUIRED USE OF	PL 87-195	SEC 608	VOL. I

			PAGE
FOREIGN AID--CONTINUED			
TRANSFER TO VOLUNTARY AGENCIES	PL 87-195	SEC 607	VOL. I
TARGETING FOR POOR	PL 87-195	SEC 128	VOL. I
TECHNOLOGY DEVELOPMENT IN DEVELOPING COUNTRIES	PL 87-195	SEC 107	VOL. I
TERMINATION OF	PL 87-195	SEC 617	VOL. I
TERRORISM			
SUSPENSION TO COUNTRIES PARTICIPATING	PL 87-195	SEC 620A	VOL. I
TRADE AND DEVELOPMENT	PL 87-195	SEC 661	VOL. I
TRANSPORT OF SUPPLIES BY DEFENSE DEPARTMENT			
REPORT TO CONGRESS	PL 98-525	SEC 1540	VOL. I
TRANSPORTATION EXPENSES	PL 87-195	SEC 636	VOL. I
TURKEY RELIEF	PL 87-195	SEC 495E	VOL. I
U.N. VOLUNTARY CONTRIBUTIONS	PL 87-195	SEC 302	VOL. I
UTILIZING NONGOVERNMENTAL ORGANIZATIONS			
STUDY BY AID	PL 99-83	SEC 311	VOL. I
WOMEN IN DEVELOPMENT	PL 87-195	SEC 113	VOL. I
FOREIGN AID, FY 1989 GENERAL PROVISIONS	PL 100-461	TITLE V	VOL. I
FOREIGN ASSISTANCE (SEE FOREIGN AID)			
FOREIGN ASSISTANCE ACT OF 1961	PL 87-195		VOL. I
FOREIGN ASSISTANCE ACT OF 1962	PL 87-565		VOL. I
FOREIGN ASSISTANCE ACT OF 1963	PL 88-205		VOL. I
FOREIGN ASSISTANCE ACT OF 1964	PL 88-633		VOL. I
FOREIGN ASSISTANCE ACT OF 1965	PL 89-171		VOL. I
FOREIGN ASSISTANCE ACT OF 1966	PL 89-583		VOL. I
FOREIGN ASSISTANCE ACT OF 1967	PL 90-137		VOL. I
FOREIGN ASSISTANCE ACT OF 1968	PL 90-554		VOL. I
FOREIGN ASSISTANCE ACT OF 1969	PL 91-175		VOL. I
FOREIGN ASSISTANCE ACT OF 1971	PL 92-226		VOL. I
FOREIGN ASSISTANCE ACT OF 1973	PL 93-189		VOL. I
FOREIGN ASSISTANCE ACT OF 1974	PL 93-559		VOL. I
FOREIGN BUILDINGS			
SOLAR ENERGY	PL 95-426	SEC 105	VOL. II
FOREIGN CLAIMS			
BULGARIA	PL 81-455	SEC 201-216	461
	PL 81-455	SEC 301-318	471
CHINA (PEOPLE'S REPUBLIC OF)			
AUTHORIZATION TO MAKE PAYMENTS	PL 81-455	SEC 8(F)	459
CERTIFICATION OF	PL 81-455	SEC 507	488
CORPORATE CLAIMS	PL 81-455	SEC 505	487
DETERMINATION OF	PL 81-455	SEC 503	440
DOUBLE RECOVERY AVOIDED	PL 81-455	SEC 506	488
OWNERSHIP OF CLAIMS	PL 81-455	SEC 504-505	487
CUBA			
CERTIFICATION OF	PL 81-455	SEC 507	488
CORPORATE CLAIMS	PL 81-455	SEC 505	487
DETERMINATION OF	PL 81-455	SEC 503	440
DOUBLE RECOVERY AVOIDED	PL 81-455	SEC 506	488
OWNERSHIP OF CLAIMS	PL 81-455	SEC 504-505	487
CZECHOSLOVAKIA	PL 81-455	SEC 401-415	434
	PL 97-127		513
	PL 93-618	SEC 408	VOL. III
GERMANY (EAST)	PL 81-455	TITLE VI	443
HUNGARY	PL 81-455	SEC 201-216	461
	PL 81-455	SEC 301-318	471
INTERNATIONAL FISHERIES COMMISSION			
REIMBURSEMENT OF INCURRED EXPENSES	PL 100-204	SEC 142	VOL. II
ITALY	PL 81-455	SEC 301-318	471
MICRONESIA			
AUTHORIZATION OF APPROPRIATIONS	PL 92-39	SEC 101-102	502
	PL 92-39	SEC 202	506
PENALTIES FOR EXCESS COMPENSATION	PL 92-39	SEC 106	505
MICRONESIAN CLAIMS COMMISSION	PL 92-39	SEC 101	502
	PL 92-39	SEC 103-104	503
	PL 92-39	SEC 201	506
FINALITY OF DECISIONS	PL 92-39	SEC 201	506
HEARINGS	PL 92-39	SEC 104	504
MICRONESIAN CLAIMS FUND	PL 92-39	SEC 102	502
NOTIFICATION OF FILING DEADLINES	PL 81-455	SEC 4	452
ROMANIA	PL 81-455	SEC 201-216	461
	PL 81-455	SEC 301-318	471

			PAGE
FOREIGN CLAIMS--CONTINUED			
RYUKYU			
WORLD WAR II DAMAGE---	PL 89-296		499
SETTLEMENT BY STATE DEPARTMENT----------	PL 84-885	SEC 2	VOL. II
SOVIET UNION----------	PL 81-455	SEC 301-318	471
VIETNAM----------	PL 81-455	TITLE VII	494
CORPORATE CLAIMS-----	PL 81-455	SEC 705	494
YUGOSLAVIA----------	PL 81-455	SEC 2	450
	PL 81-455	SEC 4	452
FOREIGN CLAIMS SETTLEMENT COMMISSION----------	PL 81-455	SEC 3 FN	451
(SEE ALSO FOREIGN CLAIMS)			
CLAIMS AGAINST IRAN			
AUTHORITY IN----------	PL 99-93	SEC 501	520
DEPOSITIONS FOR----------	PL 81-455	SEC 4	452
EVIDENCE BEFORE----------	PL 81-455	SEC 4	452
FINALITY OF DECISIONS-----	PL 81-455	SEC 4	452
FOREIGN AID CUT-OFF-------	PL 87-195	SEC 620(E)	VOL. I
HEARINGS----------	PL 81-455	SEC 4	452
MICRONESIA----------	PL 92-39	SEC 103-105	503
FOREIGN CORRUPT PRACTICES OECD INTERNATIONAL AGREEMENT----------	PL 100-418	SEC 5003(D)(1)	VOL. III
FOREIGN CORRUPT PRACTICES ACT AMENDMENTS OF 1988----------	PL 100-418	SEC 5001	VOL. III
FOREIGN CORRUPT PRACTICES ACT OF 1977----------	PL 95-213		VOL. III
FOREIGN CURRENCIES			
(SEE CURRENCIES, FOREIGN)			
FOREIGN CURRENCY PROGRAM APPROPRIATIONS, 1989-------	PL 100-460		VOL. I
FOREIGN EXCHANGE MARKET U.S. INTERVENTION IN-------	PL 99-93	SEC 810	VOL. II
FOREIGN GIFTS AND DECORATIONS			
(SEE GIFTS, FOREIGN)			
FOREIGN GIFTS AND DECORATIONS ACT OF 1966			
(SEE GIFTS, FOREIGN)			
FOREIGN GOVERNMENTS			
(SEE GOVERNMENTS, FOREIGN)			
FOREIGN INVESTMENT STUDY ACT OF 1974----------	PL 93-479		VOL. III
FOREIGN MILITARY SALES REFINANCING PROGRAM-------	PL 100-202	TITLE III	VOL. I
FOREIGN MILITARY SALES ACT			
(SEE ARMS EXPORT CONTROL ACT)			
FOREIGN MILITARY SALES ACT AMENDMENTS OF 1971----------	PL 91-672		VOL. I
FOREIGN MINISTERS			
(SEE AMBASSADORS)			
FOREIGN MISSIONS			
HOSTILE POWERS			
EQUIVALENCY OF REPRESENTATION------	PL 98-618	SEC 601	VOL. II
LIABILITY INSURANCE-------	PL 84-885	SEC 204A	VOL. II
LOCATION IN WASHINGTON, D.C.----------	PL 84-885	SEC 206	VOL. II
OFFICE OF----------	PL 84-885	SEC 203	VOL. II
PROPERTY----------	PL 84-885	SEC 205	VOL. II
PROTECTIVE SERVICES			
EXTRAORDINARY---------	PL 84-885	SEC 214	VOL. II
EXTRAORDINARY----------	EO 12478		VOL. II
SOVIET UNION			
NUMBER OF MEMBERS-----	PL 99-569	SEC 702	VOL. II
U.S. RECIPROCITY TOWARD----------	PL 100-204	SEC 152	VOL. II
U.S. POLICY----------	PL 84-885	SEC 201	VOL. II
FOREIGN MISSIONS ACT----------	PL 84-885	SEC 201-213	VOL. II
FOREIGN MISSIONS, OFFICE OF			
LIABILITY INSURANCE----------	PL 95-393	SEC 6	VOL. II
FOREIGN OFFICIALS AND OFFICIAL GUESTS OF THE UNITED STATES, ACT FOR THE PROTECTION OF----	PL 92-539		VOL. II
FOREIGN OFFICIALS IN U.S. PROTECTION OF----------	PL 92-539		VOL. II
FOREIGN OPERATIONS			
ADMINISTRATION			
DIRECTOR OF			
AUTHORITY TRANSFERRED TO USIA----------	EO 10477	SEC 3	VOL. II
FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1989----------	PL 100-461		VOL. I
FOREIGN POLICY			
EXPORT CONTROLS----------	PL 96-72	SEC 6	VOL. III

			PAGE
FOREIGN POLICY STUDY COMM. (SEE COMM. ON THE ORGANIZATION OF THE GOV'T FOR THE CONDUCT...)			
FOREIGN RELATIONS AUTHORIZATION ACT OF 1972	PL 92-352		VOL. II
FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1976	PL 94-141		VOL. II
FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1977	PL 94-350		VOL. II
FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1978	PL 95-105	SEC 1	VOL. II
FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1979	PL 95-426		VOL. II
FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1986 AND 1987	PL 99-93		VOL. II
FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989	PL 100-204		VOL. II
FOREIGN SERVICE (SEE ALSO STATE, DEPARTMENT OF, PERSONNEL)			
ALLOWANCES	PL 87-293	SEC 15(A)	VOL. I
	PL 96-465	SEC 301	VOL. II
APPOINTMENTS TO	PL 96-465	SEC 302	VOL. II
BY PRESIDENT	PL 96-465	SEC 303	VOL. II
BY SECRETARY	PL 96-465	SEC 306	VOL. II
CAREER	PL 96-465	SEC 309	VOL. II
LIMITED	PL 96-465	SEC 502	VOL. II
ASSIGNMENTS	PL 96-465	SEC 903	VOL. II
"HOME" DUTY			
FOREIGN SERVICE INSTITUTE	PL 96-465	SEC 704	VOL. II
GOVERNMENT AGENCIES	PL 96-465	SEC 503	VOL. II
INTERNATIONAL ORGANIZATIONS	PL 96-465	SEC 503	VOL. II
NATO	PL 83-665	SEC 408	VOL. I
U.N. DELEGATION	PL 79-264	SEC 2	VOL. II
AWARDS	PL 96-465	SEC 613	VOL. II
BOARD OF EXAMINERS	PL 96-465	SEC 211	VOL. II
ESTABLISHED	EO 12293	SEC 6	VOL. II
BOARD OF THE	PL 96-465	SEC 210	VOL. II
ESTABLISHED	EO 12293	SEC 9	VOL. II
BUILDINGS (SEE FOREIGN SERVICE BUILDINGS)			
CAREER DEVELOPMENT	PL 96-465	SEC 703	VOL. II
CHIEF OF MISSION			
APPOINTMENT OF	PL 96-465	SEC 304	VOL. II
EQUAL COMPETITION FOR	PL 96-465	SEC 502(D)	VOL. II
RESPONSIBLITIES	PL 96-465	SEC 207	VOL. II
CLASSIFICATIONS BY SECRETARY OF STATE	PL 96-465	SEC 501	VOL. II
COMPATIBILITY WITH OTHER AGENCIES	PL 96-465	SEC 204	VOL. II
CONGRESSIONAL OVERSIGHT OF	PL 96-465	SEC 2402	VOL. II
CONVERSION FROM FOREIGN SERVICE	PL 96-465	SEC 2104	VOL. II
SECURITY OFFICERS	PL 96-465	SEC 2104(C)	VOL. II
DANGER PAY	PL 98-164	SEC 131	VOL. II
	PL 98-533	SEC 304	VOL. II
DEATH GRATUITY	PL 96-465	SEC 413	VOL. II
DELEGATION OF FUNCTIONS	EO 12293	SEC 1,5	VOL. II
DIPLOMATIC AND CONSULAR OFFICERS	PL 96-465	SEC 312	VOL. II
DIRECTION OF	PL 81-73	SEC 3	VOL. II
DIRECTOR GENERAL	PL 81-73	SEC 3	VOL. II
DISABILITY (SEE FOREIGN SERVICE, RETIREMENT)			
EDUCATION FACILITIES FOR FAMILY MEMBERS	PL 84-885	SEC 29	VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS	PL 87-256	SEC 104	VOL. II
EFFICIENCY RECORDS AVAILABILITY	PL 96-465	SEC 604	VOL. II
EMPLOYEES PROTECTION OF	PL 100-204	SEC 172	VOL. II
EMPLOYMENT OPPORTUNITIES FOR FAMILY MEMBERS	PL 84-885	SEC 27	VOL. II
ENTRY LEVEL	PL 96-465	SEC 307	VOL. II
FAMILIES			
DEATH GRATUITY	PL 96-465	SEC 413	VOL. II
EDUCATIONAL FACILITIES	PL 84-885	SEC 29	VOL. II
EMPLOYMENT OPPORTUNITIES	PL 84-885	SEC 27	VOL. II
FORMER SPOUSES RETIREMENT BENEFITS	PL 96-465	SEC 814	VOL. II
FORMER SPOUSES SURVIVOR BENEFITS	PL 96-465	SEC 2109	VOL. II

			PAGE
FOREIGN SERVICE--CONTINUED			
FUNCTIONS OF	PL 96-465	SEC 104	VOL. II
HOUSEHOLD FURNISHINGS PROVIDED	PL 96-465	SEC 902	VOL. II
IMPRISONED FOREIGN NATIONALS COMPENSATION	PL 96-465	SEC 410	VOL. II
INFORMATION OFFICERS (SEE FOREIGN SERVICE INFORMATION OFFICERS)			
INSPECTOR GENERAL	PL 96-465	SEC 209	VOL. II
INTERNATIONAL TERRORISM SECURITY AGAINST	PL 98-533	SEC 301	VOL. II
JUNIOR OFFICERS COMPENSATION FOR	PL 95-105	SEC 412	VOL. II
LABOR-MANAGEMENT RELATIONS APPLICATION	PL 96-465	SEC 1003	VOL. II
EMPLOYEE RIGHTS	PL 96-465	SEC 1004	VOL. II
FOREIGN SERVICE GRIEVANCE BOARD	PL 96-465	SEC 1105-7	VOL. II
GENERAL COUNSEL	PL 96-465	SEC 1008	VOL. II
GRIEVANCES	PL 96-465	SEC 1101-10	VOL. II
JUDICIAL REVIEW	PL 96-465	SEC 1009	VOL. II
LABOR ORGANIZATION STANDARDS	PL 96-465	SEC 1017	VOL. II
LABOR RELATIONS BOARD	PL 96-465	SEC 1006-7	VOL. II
MANAGEMENT RIGHTS	PL 96-465	SEC 1005	VOL. II
POLICY	PL 96-465	SEC 1001	VOL. II
REPRESENTATION RIGHTS OF EMPLOYEES	PL 96-465	SEC 1012-13	VOL. II
RESOLUTION OF DISPUTES	PL 96-465	SEC 1014	VOL. II
UNFAIR LABOR PRACTICES	PL 96-465	SEC 1015-16	VOL. II
LANGUAGE REQUIREMENTS	PL 96-465	SEC 702	VOL. II
LATERAL ENTRY FOR AMERICAN BUSINESSMEN AND FARMERS	PL 99-93	SEC 121	VOL. II
LEGAL SERVICES	PL 84-885	SEC 26	VOL. II
MEDICAL SERVICES ABROAD	PL 96-465	SEC 904	VOL. II
ELIGIBILITY	PL 96-465	SEC 904	VOL. II
INOCULATIONS	PL 96-465	SEC 904	VOL. II
MALPRACTICE SUITS	PL 84-885	SEC 30	VOL. II
PHYSICAL EXAMINATIONS	PL 96-465	SEC 904	VOL. II
TRAVEL FOR	PL 96-465	SEC 904	VOL. II
TREATMENT EXPENSES	PL 96-465	SEC 904	VOL. II
MEMBERS OF	PL 96-465	SEC 103	VOL. II
MERESMAN CASE	PL 96-465	SEC 2103(F)	VOL. II
MINORITY GROUP AND WOMEN MEMBERS	PL 100-204	SEC 183	VOL. II
OBJECTIVES	PL 96-465	SEC 101	VOL. II
PERSONNEL SYSTEM STUDY OF	PL 100-204	SEC 171	VOL. II
USE BY OTHER AGENCIES	PL 96-465	SEC 202-203	VOL. II
POST FACILITIES	PL 84-885	SEC 31	VOL. II
PROMOTIONS	PL 96-465	SEC 601	VOL. II
GRIEVANCE BOARDS	PL 96-465	SEC 606	VOL. II
SELECTION BOARDS	PL 96-465	SEC 605	VOL. II
RECALL OF MEMBERS	PL 96-465	SEC 308	VOL. II
REEMPLOYMENT	PL 96-465	SEC 310	VOL. II
REFUGEE RELIEF	PL 87-510	SEC 5	VOL. II
RESERVE OFFICERS (SEE FOREIGN SERVICE RESERVE OFFICERS)			
RETIREMENT CONFORMING TO CIVIL SERVICE	EO 12293	SEC 3	VOL. II
CREDITABLE SERVICE	PL 96-465	SEC 816	VOL. II
DEFINITIONS	PL 96-465	SEC 804	VOL. II
DISABILITY	PL 96-465	SEC 808	VOL. II
DUE TO EXPIRATION OF TIME IN CLASS	PL 96-465	SEC 607	VOL. II
DUE TO PERFORMANCE	PL 96-465	SEC 608	VOL. II
EXTRA SERVICE CREDIT	PL 96-465	SEC 817	VOL. II
FORMER PRESIDENTIAL APPOINTEES	PL 96-465	SEC 813	VOL. II
FORMER SPOUSES	PL 96-465	SEC 814	VOL. II
MANDATORY	PL 96-465	SEC 812	VOL. II
PARTICIPANTS	PL 96-465	SEC 803	VOL. II
PHYSICAL EXAMINATIONS	PL 96-465	SEC 808	VOL. II
SCHEDULE	PL 94-350	SEC 500	VOL. II
RETIREMENT ANNUITIES BENEFITS FOR FORMER SPOUSE	PL 96-465	SEC 830	VOL. II
BENEFITS FOR SURVIVING SPOUSE	PL 96-465	SEC 831	VOL. II
COMPUTATION OF	PL 96-465	SEC 806	VOL. II
COST-OF-LIVING ADJUSTMENTS	PL 96-465	SEC 826	VOL. II
DEATH IN SERVICE	PL 96-465	SEC 809	VOL. II
PAYMENT OF	PL 96-465	SEC 809	VOL. II

			PAGE
FOREIGN SERVICE--CONTINUED			
RECALL TO SERVICE	PL 96-465	SEC 823	VOL. II
RECOMPUTATION OF	PL 96-465	SEC 823	VOL. II
REEMPLOYMENT	PL 96-465	SEC 824	VOL. II
RETIREMENT FUND	PL 96-465	SEC 802	VOL. II
ANNUITY ELECTIONS FOR SURVIVORS	PL 94-350	SEC 523	VOL. II
APPROPRIATIONS FOR	PL 96-465	SEC 818	VOL. II
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
CONFORMITY WITH CIVIL SERVICE SYSTEMS	PL 96-465	SEC 827	VOL. II
CONTRIBUTIONS	PL 96-465	SEC 805	VOL. II
EXTRA CONTRIBUTIONS	PL 96-465	SEC 825	VOL. II
FREE FROM LEGAL PROCESS	PL 96-465	SEC 820	VOL. II
FUTURE BENEFITS	PL 96-465	SEC 821	VOL. II
INVESTMENT OF	PL 96-465	SEC 819	VOL. II
LIABILITY OBLIGATIONS	PL 96-465	SEC 822	VOL. II
REPORT	PL 96-465	SEC 822	VOL. II
UNFUNDED LIABILITY	PL 96-465	SEC 822	VOL. II
RETIREMENT, INVOLUNTARY BENEFITS	PL 96-465	SEC 608	VOL. II
SALARIES	PL 96-465	SEC 401-409	VOL. II
AFTER REEMPLOYMENT	PL 96-465	SEC 824	VOL. II
CHIEFS OF MISSION	PL 96-465	SEC 401	VOL. II
COMPENSATORY TIME	PL 95-426	SEC 411	VOL. II
CONSULAR AGENTS	PL 96-465	SEC 409	VOL. II
CONVERSION TO FOREIGN SERVICE SCHEDULE	PL 96-465	SEC 2102	VOL. II
CONVERSION TO SENIOR FOREIGN SERVICE	PL 96-465	SEC 2103	VOL. II
DANGER PAY	PL 96-465	SEC 2311	VOL. II
FOREIGN NATIONALS	PL 96-465	SEC 408	VOL. II
OFFICERS	PL 96-465	SEC 403	VOL. II
SPECIAL DIFFERENTIAL	PL 96-465	SEC 412	VOL. II
TRANSITION PERIOD	PL 96-465	SEC 2101	VOL. II
U.S. PERSONNEL AT U.N.	PL 79-264	SEC 2	VOL. II
SECRETARY OF STATE	PL 96-465	SEC 201	VOL. II
SECURITY OFFICERS CONVERSION FROM FOREIGN SERVICE	PL 96-465	SEC 2104(C)	VOL. II
SELECTION BOARDS	PL 96-465	SEC 602-603	VOL. II
SELECTION-OUT SPECIAL ANNUITY	PL 95-105	SEC 411	VOL. II
SENIOR FOREIGN SERVICE APPOINTMENT TO	PL 96-465	SEC 305	VOL. II
SALARIES	PL 96-465	SEC 402	VOL. II
SEPARATION FOR CAUSE	PL 96-465	SEC 610	VOL. II
SPECIAL AGENTS GENERAL AUTHORITY	PL 84-885	SEC 37	VOL. II
SPOUSES INCREASING EMPLOYMENT	PL 99-93	SEC 120	VOL. II
LANGUAGE TRAINING FOR	PL 95-105	SEC 414	VOL. II
SURVIVOR BENEFITS FORMER SPOUSES	PL 96-465	SEC 2109	VOL. II
TERMINATION OF APPOINTMENTS	PL 96-465	SEC 611-612	VOL. II
TRAVEL EXPENSES	PL 96-465	SEC 901	VOL. II
EXTRA PAY	PL 84-885	SEC 32	VOL. II
USIA AUTHORITY OVER	EO 10477	SEC 2	VOL. II
VEHICLE USE	PL 84-885	SEC 28	VOL. II
VOTING RIGHTS IN FEDERAL ELECTIONS	PL 96-465	SEC 906	VOL. II
FOREIGN SERVICE ACT OF 1980	PL 96-465		VOL. II
STANDARDS FOR ACDA	PL 87-297	SEC 48	VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE	EO 11034	SEC 5	VOL. II
FOREIGN SERVICE BOARD	PL 87-297	SEC 42	VOL. II
FOREIGN SERVICE BUILDINGS ADDITIONAL APPROPRIATIONS	PL 75-543		VOL. II
ANTIGUA AND BARBUDA CLOSING DIPLOMATIC AND CONSULAR POSTS	PL 100-204	SEC 123	VOL. II
APPROPRIATIONS, 1989	PL 100-459	TITLE III	VOL. II
AUTHORIZATION OF APPROPRIATIONS	PL 69-186	SEC 4	VOL. II
CONSULAR FACILITIES IN MEXICO IMPROVEMENT OF	PL 98-164	SEC 103	VOL. II
CONSULATES TO REMAIN OPEN	PL 96-60	SEC 108	VOL. II
CONTRACTS AWARD OF	PL 69-186	SEC 11	VOL. II
TERMS OF	PL 69-186	SEC 3	VOL. II
DESTRUCTION OF PROPERTY	PL 69-186	SEC 9	VOL. II
DIPLOMATIC CONSTRUCTION PROGRAM	PL 99-399	SEC 402	VOL. II
FOREIGN CURRENCIES USE OF	PL 69-186	SEC 4(I)	VOL. II

			PAGE
FOREIGN SERVICE BUILDINGS--CONTINUED			
FOREIGN CURRENCIES FROM NCIES FROM AGRICULTURAL COMPL	PL 83-480	SEC 104(B)(4)	VOL. I
FUND	PL 69-186	SEC 4	VOL. II
GIFTS OF PROPERTY OR SERVICES	PL 69-186	SEC 9	VOL. II
GOVERNMENT AGENCIES	PL 69-186	SEC 1	VOL. II
INSURANCE	PL 69-186	SEC 5	VOL. II
LEASEHOLDS			
LENGTH OF	PL 69-186	SEC 6	VOL. II
PURPOSE OF LEGISLATION	PL 69-186	SEC 1	VOL. II
RENT CREDITED	PL 69-186	SEC 1	VOL. II
REPORTS TO CONGRESS	PL 69-186	SEC 9	VOL. II
RESIDENCES	PL 69-186	SEC 3	VOL. II
SECRETARY OF STATE	PL 69-186	SEC 1	VOL. II
SOVIET UNION LOCATIONS	PL 69-186	SEC 4(I)	VOL. II
SURPLUS PROPERTY DISPOSAL OF	PL 79-547		VOL. II
USE OF FUNDS	PL 100-204	SEC 122	VOL. II
USIA'S FACILITIES	PL 69-186	SEC 4	VOL. II
FOREIGN SERVICE BUILDINGS ACT OF 1926	PL 69-186		VOL. II
FOREIGN SERVICE INFORMATION OFFICERS			
MERGER WITH FOREIGN SERVICE CORPS	PL 98-164	SEC 130(C)	VOL. II
FOREIGN SERVICE INSTITUTE			
ASSIGNMENT TO	PL 96-465	SEC 704	VOL. II
LANGUAGE TRAINING	PL 96-465	SEC 702	VOL. II
FAMILY MEMBERS	PL 96-465	SEC 704	VOL. II
PURPOSE	PL 96-465	SEC 701	VOL. II
TRAINING	PL 96-465	SEC 704-705	VOL. II
TRAINING FACILITIES	PL 99-93	SEC 123	VOL. II
TRUST TERRITORIES OF THE PACIFIC ISLANDS			
STUDENTS FROM	PL 96-465	SEC 701(C)	VOL. II
FOREIGN SERVICE PENSION SYSTEM	PL 96-465	SEC 851-862	VOL. II
FOREIGN SERVICE RESERVE OFFICERS	PL 89-134	SEC 5	VOL. I
ASSIGNMENTS			
FOREIGN AID PROGRAM	PL 87-195	SEC 625	VOL. I
FOREIGN SERVICE RETIREMENT AMENDMENTS OF 1976	PL 94-350	SEC 500	VOL. II
FOREIGN SERVICE RETIREMENT AND DISABILITY FUND			
APPROPRIATIONS, 1989	PL 100-459	TITLE III	VOL. II
FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM			
(SEE FOREIGN SERVICE, RETIREMENT)			
FOREIGN SHIPPING PRACTICES ACT OF 1988	PL 100-418	SEC 10001	VOL. III
FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976	PL 94-583		VOL. II
FOREIGN TRADE			
(SEE TRADE)			
FORMOSA RESOLUTION			
REPEALED	PL 93-475	SEC 3	VOL. II
FRANCE-U.S. RELATIONS			
ARMS CONTROL			
LIMITING CONVENTIONAL ARMS TRANSFERS	PL 99-83	SEC 129	VOL. I
FRENCH REVOLUTION BICENTENNIAL COMMEMORATION	PL 100-482		634
FSI			
(SEE FOREIGN SERVICE INSTITUTE)			
FSIO			
(SEE FOREIGN SERVICE INFORMATION OFFICERS)			
FUEL SUPPLIES			
USE IN FOREIGN AID PROGRAM	PL 87-195	SEC 647	VOL. I
FUGITIVES			
(SEE HIJACKINGS)			
(SEE REFUGEES)			
FULBRIGHT ACADEMIC EXCHANGE PROGRAM			
AUTHORIZATION, 1984-85	PL 98-164	SEC 206	VOL. II
FULBRIGHT EDUCATIONAL EXCHANGE PROGRAM	PL 87-256	SEC 112(A)(1)	VOL. II
FULBRIGHT-HAYS ACT			
(SEE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961)			
FUTURES TRADING ACT OF 1982	PL 97-444		VOL. III
G			
GABON			
ALBERT SCHWEITZER HOSPITAL	PL 93-189	SEC 33	VOL. I

			PAGE
GAO			
ACDA AUDIT	PL 87-297	SEC 46	VOL. II
DIPLOMATIC AND CONSULAR SERVICE AUDIT	PL 84-885	SEC 20	VOL. II
FOREIGN AID	PL 87-195	SEC 624	VOL. I
	PL 87-195	SEC 635	VOL. I
GATT			
(SEE ALSO TRADE)			
AUTHORIZATION OF APPROPRIATIONS FOR	PL 93-618	SEC 121	VOL. III
BARRING IMPORT OF FISH PRODUCTS	PL 83-680	SEC 8	186
COMMUNIST MEMBERS	PL 93-618	SEC 502	VOL. III
GENERAL ACCOUNTING OFFICE			
(SEE GAO)			
GENERAL AGREEMENT ON TARIFFS AND TRADE			
(SEE GATT)			
GENERAL ASSEMBLY RESOLUTION 33/79			
IMPLEMENTATION OF	PL 98-164	SEC 114(A)(6)	VOL. II
GENERAL GOVERNMENT MATTERS			
APPROPRIATION ACT, 1962	PL 87-125		VOL. I
GENERALIZED SYSTEM OF PREFERENCES RENEWAL ACT OF 1984	PL 98-573	SEC 501	VOL. III
GEOGRAPHY AWARENESS WEEK =			
PROCLAMATION	PL 100-391		628
GEORGE C. MARSHALL			
STATUE OF	PL 95-426	SEC 104	VOL. II
GERMAN DEMOCRATIC REPUBLIC-U.S. RELATIONS			
FISHERY AGREEMENTS	PL 100-350		44
GERMAN-AMERICAN DAY	PL 100-392		630
GERMANY (EAST)-U.S. RELATIONS			
FOREIGN CLAIMS	PL 81-455	TITLE VI	490
GERMANY			
BERLIN			
ACCESS TO	H CON RES 87-570		VOL. II
GERMANY-U.S. RELATIONS			
AIR DEFENSE AGREEMENTS	PL 99-83	SEC 132	VOL. I
AIR DEFENSE OF U.S.			
MILITARY BASES	PL 98-525	SEC 105	VOL. I
ATOMIC ENERGY COOPERATION	PL 83-703	SEC 125	273
PATRIOT MISSILE SYSTEM	PL 98-525	SEC 105	VOL. I
TEENAGE EXCHANGE PROGRAM	PL 98-164	SEC 211	VOL. II
WEST BERLIN			
FOREIGN AID	PL 87-195	SEC 614	VOL. I
GIFTS (FOREIGN)			
APPROVAL FOR USE OF	S RES 90-314		VOL. II
DEFINED	PL 89-673	SEC 2	VOL. II
	PL 95-105	SEC 515(A)(1)	VOL. II
DEPOSITED	PL 89-673	SEC 6	VOL. II
INDUCEMENT PROHIBITED	PL 95-105	SEC 515(A)(1)	VOL. II
RELEASE TO DONEE	PL 89-673	SEC 6	VOL. II
REPORTS TO CONGRESS	PL 95-105	SEC 515(B)(2)	VOL. II
SENATE PROCEDURES	PL 95-105	SEC 515(A)(1)	VOL. II
VALUE	PL 95-105	SEC 515(A)(1)	VOL. II
GIFTS (GENERAL)			
ACCEPTANCE BY SECRETARY OF STATE	PL 84-885	SEC 25	VOL. II
DISPOSITION OF	PL 84-885	SEC 25	VOL. II
TO FOREIGN SERVICE BUILDINGS	PL 69-186	SEC 9	VOL. II
GIFTS (U.S.)			
FOREIGN AID APPROPRIATIONS PROHIBITION	PL 87-195	SEC 451(C)	VOL. I
TO FOREIGN OFFICIALS PROHIBITED PRACTICES	PL 95-213	SEC 104	VOL. III
GLOBAL CLIMATE PROTECTION ACT OF 1987	PL 100-204	SEC 1101	382
GLOBAL SECURITY	PL 97-113	SEC 710	VOL. I
GLOMAR JAVA SEA			
ASCERTAINING FATE OF SURVIVORS	PL 98-525	SEC 1541	VOL. I
GOLD			
ROLE IN INTERNATIONAL MONETARY SYSTEM			
REPORTS TO CONGRESS	PL 96-389	SEC 10	VOL. III
GOLD RESERVE ACT OF 1934			
FUND CREATED BY	PL 73-171	SEC 18	VOL. III
	PL 73-171	SEC 7	VOL. III
GORGAS MEMORIAL INSTITUTE			
AUTHORIZATION OF APPROPRIATIONS	PL 93-559	SEC 47	VOL. I
GOVERNMENT CORPORATION CONTROL ACT			
COMPLIANCE WITH			
INTER-AMERICAN FOUNDATION	PL 91-175	SEC 401(T)	VOL. I

		PAGE
GOVERNMENT CORPORATION CONTROL ACT--CONTINUED		
OPIC	PL 87-195 SEC 239(C)	VOL. I
GOVERNMENT PROCUREMENT		
TRADE AGREEMENT ON	PL 96-39 SEC 301-309	VOL. III
GOVERNMENTS (FOREIGN)		
AGENTS OF		
NOTIFYING THE ATTORNEY GENERAL	18 USC 951	540
AIRPORT SECURITY	PL 99-83 SEC 551	VOL. I
SUSPENSION OF FOREIGN AID	PL 99-83 SEC 552	VOL. I
ARMING OF VESSELS BY U.S. CITIZENS	18 USC 961	554
CORRUPT PRACTICES BY		
DOMESTIC CONCERNS	PL 95-213 SEC 104	VOL. III
DENYING MARKET OPPORTUNITIES FOR U.S. PRODUCTS AND SERVICES	PL 100-202 SEC 109	VOL. III
DRUG CONTROL EFFORTS		
CONDITIONS FOR AID	PL 99-167 SEC 124	VOL. I
FOREIGN AID PERSONNEL		
ASSIGNED TO	PL 87-195 SEC 627	VOL. I
FOREIGN CORRUPT PRACTICES INTERNATIONAL AGREEMENT	PL 100-418 SEC 5003(D)(1)	VOL. III
GIFTS FROM	PL 95-213 SEC 104	VOL. III
HUMANITARIAN ASSISTANCE	PL 98-525 SEC 1540	VOL. I
INTELLECTUAL PROPERTY RIGHTS		
INADEQUATE PROTECTION OF	PL 93-618 SEC 182	VOL. III
PERSONNEL		
PEACE CORPS		
CONTRIBUTION	PL 87-293 SEC 14	VOL. I
TRADE POLICIES		
COUNTRY REPORTS ON	PL 100-418 SEC 2202	VOL. III
GRASSROOTS COLLABORATION PROGRAM		
MDBS AND NGOS		
INCREASE INTERACTION	PL 95-118 SEC 1602	VOL. III
GREECE-U.S. RELATIONS	PL 87-195 SEC 620C	VOL. I
ARMS SALES	PL 99-83 SEC 101(E)	VOL. I
ARMS SALES CREDITS		
REPAYMENT	PL 96-92 SEC 17(B)	VOL. I
CYPRUS CONFLICT	PL 94-104 SEC 2	VOL. I
GREEK INDEPENDENCE DAY PROCLAMATION	PL 100-266	617
GRIEVANCES		
(SEE FOREIGN SERVICE, EMPLOYEE-MANAGEMENT RELATIONS)		
GSP		
COUNTRIES ELIGIBLE FOR	19 USC 1202	VOL. III
GUAM		
GOVERNMENT OF	PL 83-451 SEC 4	509
GUATEMALA		
RESETTLEMENT PROGRAM		
AID PROHIBITION	PL 100-461 SEC 534	VOL. I
GUATEMALA-U.S. RELATIONS		
BELIZE INDEPENDENCE		
RECOGNITION OF	PL 99-83 SEC 703(G)	VOL. I
FOREIGN AID		
CONDITIONS FOR	PL 99-83 SEC 703	VOL. I
SUSPENSION OF	PL 99-83 SEC 703(D)	VOL. I
GUERNICA	PL 95-426 SEC 605	VOL. II
H		
HAITI-U.S. RELATIONS		
AID		
CONDITIONS FOR	PL 99-83 SEC 705	VOL. I
PROVIDE THROUGH PVOS	PL 99-83 SEC 705	VOL. I
ASSISTANCE IN RECOVERING STOLEN ASSETS	PL 99-529 SEC 204	VOL. I
FOREIGN AID SUSPENSION	PL 100-461 SEC 563	VOL. I
FOREIGN AID, 1984		
CONDITIONS FOR	PL 98-151 SEC 101(B)(2)	VOL. I
FOREIGN AID, 1987	PL 99-529 SEC 202	VOL. I
MILITARY AID, 1987		
AUTHORIZATION	PL 99-529 SEC 203	VOL. I
CONDITIONS ON	PL 99-529 SEC 203	VOL. I
PROPERTY IN U.S.		
DISPOSITION OF	EO 12588	VOL. III
REFUGEES	PL 97-113 SEC 721	VOL. I
	PL 98-151 SEC 101(B)(2)	VOL. I
	EO 12341	VOL. II
HALIBUT		
(SEE FISHERIES)		
HARMONIZED TARIFF SCHEDULE		
ENACTMENT OF	PL 100-418 SEC 1204	VOL. III

			PAGE
HARMONIZED TARIFF SCHEDULE--CONTINUED			
IMPLEMENTATION OF	PL 100-418	SEC 1201	VOL. III
INTERNATIONAL TRADE COMMISSION			
REPORT TO CONGRESS	PL 100-418	SEC 1216	VOL. III
REVIEW OF BY INTERNATIONAL TRADE COMMISSION	PL 100-418	SEC 1205	VOL. III
TRANSITION TO	PL 100-418	SEC 1211	VOL. III
HEALTH CARE			
PEACE CORPS VOLUNTEERS	PL 87-293	SEC 5(E)	VOL. I
PROMOTING IMMUNIZATION AND ORAL REHYDRATION	PL 99-529	SEC 101	VOL. I
SWINE INFLUENZA			
CONTROL OF	PL 94-302	TITLE III	VOL. I
HELSINKI HUMAN RIGHTS DAY - PROCLAMATION	PL 100-377		VOL. II
HERBICIDES			
DIOXIN			
INTERNATIONAL COMMISSIONS USE OF	PL 98-164	SEC 135	VOL. II
HICKENLOOPER AMENDMENT	PL 87-195	SEC 620(E)(1)	VOL. I
HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN, INTERNATIONAL CONV. FOR THE IMPLEMENTATION OF	PL 83-579		106
HIJACKINGS			
PENALTY	PL 93-366	SEC 105	403
TWA FLIGHT 847			
SENSE OF CONGRESS	PL 99-83	SEC 558	VOL. I
HONDURAS			
NICARAGUA RELATIONS	PL 97-377	SEC 793	VOL. I
HONDURAS-U.S. RELATIONS			
POLICE TRAINING			
FOREIGN AID FOR	PL 87-195	SEC 660(D)	VOL. I
RAMIREZ CASE SETTLEMENT			
RELEASE OF			
APPROPRIATIONS	PL 100-461	SEC 574	VOL. I
REFUGEES	PL 99-83	SEC 704	VOL. I
TERRORISM	PL 100-204	SEC 1213	VOL. II
HOSPITAL, AMERICAN CHILDREN'S			
ZABLOCKI OUTPATIENT FACILITY	PL 98-266		VOL. I
HOSPITALS (ABROAD)			
SPONSORED BY U.S.	PL 87-195	SEC 214	VOL. I
HOSTAGE RELEASE			
(SEE ALSO IRAN-U.S. RELATIONS)			
CLAIMS			
NON-PROSECUTION OF	EO 12283		VOL. III
HOSTAGE RELIEF ACT OF 1980	PL 96-449		VOL. II
HOSTAGES (U.S.)	PL 96-449		VOL. II
(SEE ALSO IRAN-U.S. RELATIONS)			
CIVIL RELIEF ACT OF 1940			
APPLICATION EXTENSION	PL 96-449	SEC 105	VOL. II
COMPENSATION FOR			
PRESIDENT'S COMMISSION ON	EO 12285		VOL. III
DELEGATION OF FUNCTIONS	EO 12268		VOL. II
EDUCATION BENEFITS	PL 96-449	SEC 104	VOL. II
IRAN			
RED CROSS VISITS	PL 96-449	SEC 301	VOL. II
MEDICAL CARE	PL 96-449	SEC 103	VOL. II
PAY AND ALLOWANCES	PL 96-449	SEC 102	VOL. II
RETURN DATE	EO 12313		VOL. III
TAXES	PL 96-449	SEC 201	VOL. II
HOUSING			
GUARANTY PROGRAMS			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
LESS-DEVELOPED COUNTRIES	PL 87-195	SEC 221-223	VOL. I
HUMAN RIGHTS			
AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 112	VOL. I
ASSISTANT SECRETARY OF STATE FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS	PL 87-195	SEC 624(F)	VOL. I
BELGRADE CONFERENCE	PL 95-105	SEC 502	VOL. II
CAMBODIA AND UGANDA	PL 95-426	SEC 610	VOL. II
CHILE	PL 93-189	SEC 35	VOL. I
CHINA (PEOPLE'S REPUBLIC OF)			
SENSE OF CONGRESS	PL 100-204	SEC 1245	VOL. II
VIOLATIONS IN TIBET	PL 100-204	SEC 1243	VOL. II
CUBA			
INVESTIGATION OF	PL 100-461	SEC 582	VOL. I
SENSE OF CONGRESS	PL 100-204	SEC 1211	VOL. II
ETHIOPIA			
SENSE OF CONGRESS	PL 100-204	SEC 1221	VOL. II
EXPORT-IMPORT BANK	PL 79-173	SEC 2(B)(1)	VOL. III
FOREIGN AID CONDITIONED ON	PL 87-195	SEC 116	VOL. I

			PAGE
HUMAN RIGHTS--CONTINUED			
GUATEMALA	PL 99-83	SEC 703(H)	VOL. I
INTER-AMERICAN COMMISSION ON	PL 87-195	SEC 302(A)(2)	VOL. I
KOREA	PL 94-329	SEC 412	VOL. I
MOBS	PL 95-118	SEC 705	VOL. III
ENHANCEMENT OF	PL 95-118	SEC 701	VOL. III
MEXICO			
PRISONERS (U.S.)	PL 94-329	SEC 408	VOL. I
OPIC	PL 87-195	SEC 239(I)	VOL. I
PARAGUAY			
SENSE OF CONGRESS	PL 100-204	SEC 1214	VOL. II
REAFFIRMATION OF CONGRESSIONAL SUPPORT	PL 97-113	SEC 713	VOL. I
REPORTS TO CONGRESS	PL 87-195	SEC 502B	VOL. I
SECURITY ASSISTANCE CONDITIONED ON	PL 87-195	SEC 502B	VOL. I
TORTURE			
U.S. OPPOSITION TO	PL 98-447		566
HUMAN RIGHTS AND FOREIGN ASSISTANCE			
INTERAGENCY GROUP ON	PL 96-533	SEC 710	VOL. I
HUMANITARIAN ASSISTANCE			
AFGHAN REFUGEES			
EXTENSION OF AUTHORIZATION	PL 99-661	SEC 331	VOL. I
AFGHANISTAN	PL 100-461	SEC 537	VOL. I
	PL 100-463	TITLE II	VOL. I
AFGHANISTAN REFUGEES	PL 100-456	SEC 303	VOL. I
DEFENSE DEPARTMENT			
PROVIDING	10 USC 401		VOL. I
EXEMPTIONS TO FOREIGN AGENTS ENGAGED IN	PL 75-583	SEC 3	531
EXTENSION OF AUTHORIZATION	PL 100-180	SEC 331	VOL. I
NICARAGUA DEMOCRATIC RESISTANCE	PL 99-591	SEC 208	VOL. I
NICARAGUAN DEMOCRATIC RESISTANCE	PL 99-88		VOL. I
NON-COMMUNIST RESISTANCE FORCES	PL 100-456	SEC 303	VOL. I
TRANSPORT OF SUPPLIES BY DEFENSE DEPARTMENT	10 USC 402		VOL. I
REPORT TO CONGRESS	PL 98-525	SEC 1540	VOL. I
USING NON-LETHAL EXCESS SUPPLIES	10 USC 2547		VOL. I
HUMPHREY FELLOWSHIP PROGRAM	PL 87-256	SEC 112(A)(2)	VOL. II
AUTHORIZATION, 1984-85	PL 98-164	SEC 206	VOL. II
HUNGARY-U.S. RELATIONS			
CLAIMS			
LIQUIDATION OF PROPERTY	PL 81-455	SEC 201-216	461
CLAIMS AGAINST	PL 81-455	SEC 301-318	471
TRADE RESTRICTIONS			
WAIVER	EO 12051		VOL. III
U.S.-HUNGARIAN CLAIMS			
AGREEMENT OF 1973	PL 81-455	SEC 302-303	472
	PL 81-455	SEC 310	476
	PL 81-455	SEC 316	479
HUNGER			
CONGRESSIONAL FINDING ON	PL 97-113	SEC 712	VOL. I
HUNGER PREVENTION			
(SEE FOOD AID)			

I

IADB			
AMENDING ARTICLES OF AGREEMENT	PL 86-147	SEC 20	VOL. III
	PL 86-147	SEC 23-25	VOL. III
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
AUDIT	PL 86-147	SEC 14	VOL. III
CAPITAL STOCK	PL 86-147	SEC 15-19	VOL. III
SUBSCRIPTIONS PAID	PL 86-147	SEC 7	VOL. III
COURTS			
JURISDICTION	PL 86-147	SEC 8	VOL. III
VENUE	PL 86-147	SEC 8	VOL. III
DEVELOPMENT PROGRAMS			
COORDINATION OF	PL 100-461	SEC 546	VOL. I
ENERGY EXPLORATION			
REPORT TO CONGRESS	PL 96-259	SEC 102	VOL. III
FUND FOR SPECIAL OPERATIONS	PL 86-147	SEC 15-19	VOL. III
U.S. CONTRIBUTION	PL 86-147	SEC 30	VOL. III
LIMITATIONS ON THE PRESIDENT	PL 86-147	SEC 5	VOL. III
MEMBER BANKS	PL 86-147	SEC 6	VOL. III
NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS	PL 86-147	SEC 12	VOL. III
PRIVILEGES AND IMMUNITIES	PL 86-147	SEC 9	VOL. III
SECURITIES	PL 86-147	SEC 10-11	VOL. III

			PAGE
IADB—CONTINUED			
SECURITIES AND EXCHANGE COMMISSION			
REPORTS	PL 86-147	SEC 11	VOL. III
SOCIAL PROGRESS TRUST FUND			
AGREEMENT (1961)	PL 93-189	SEC 36	VOL. I
U.S. MEMBERSHIP			
ACCEPTANCE OF	PL 86-147	SEC 2	VOL. III
VOTING INSTRUCTIONS			
CAPITAL STOCK INCREASE	PL 86-147	SEC 26	VOL. III
DRUG TRADE	PL 86-147	SEC 22	VOL. III
FUND FOR SPECIAL OPERATIONS	PL 86-147	SEC 26	VOL. III
NATIONALIZATION OF U.S. PROPERTY	PL 86-147	SEC 21	VOL. III
REPUDIATION OF U.S. CONTRACTS	PL 86-147	SEC 21	VOL. III
TECHNOLOGY	PL 86-147	SEC 28	VOL. III
IAEA			
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
CONDITIONS ON	PL 100-461	TITLE I	VOL. I
CONGRESSIONAL APPROVAL OF STATUTE CHANGE	PL 85-177	SEC 8	309
REPORTS TO CONGRESS	PL 85-177	SEC 3	307
U.S. CONTRIBUTION	PL 85-177	SEC 5	307
	PL 87-195	SEC 301	VOL. I
U.S. PARTICIPATION IN	PL 85-177		306
U.S. REPRESENTATIVE TO	PL 85-177	SEC 2	306
IBRD			
(SEE WORLD BANK)			
ICELAND-U.S. RELATIONS			
FISHERY AGREEMENTS	PL 98-623	TITLE I	41
IDA			
(SEE ALSO WORLD BANK)			
APPOINTMENTS	PL 86-565	SEC 3	VOL. III
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
CAPITAL STOCK	PL 86-565	SEC 10-11	VOL. III
PAYMENT OF SUBSCRIPTIONS	PL 86-565	SEC 7	VOL. III
COURTS			
JURISDICTION	PL 86-565	SEC 8	VOL. III
VENUE	PL 86-565	SEC 8	VOL. III
LOANS			
VOTING AGAINST	PL 86-565	SEC 12-13	VOL. III
MEMBER BANKS	PL 86-565	SEC 6	VOL. III
NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS	PL 86-565	SEC 4	VOL. III
PRIVILEGES AND IMMUNITIES	PL 86-565	SEC 9	VOL. III
	PL 86-565	SEC 9	VOL. III
PROHIBITIONS	PL 86-565	SEC 5	VOL. III
RESOURCES INCREASE AUTHORIZATION	PL 86-565	SEC 14, 16	VOL. III
SPECIAL FACILITY FOR SUB-SAHARAN AFRICA AUTHORIZATION OF APPROPRIATIONS	PL 86-565	SEC 19	VOL. III
U.S. MEMBERSHIP ACCEPTANCE OF	PL 86-565	SEC 2	VOL. III
IDCA	EO 12163	SEC 1-101	VOL. I
AUTHORITY ADDITIONAL DELEGATIONS AND LIMITATIONS	EO 12163	SEC 1-601	VOL. I
DELEGATION OF AUTHORITY	44 FR 57521		VOL. I
	44 FR 65485		VOL. I
DELEGATION OF FUNCTIONS TO PL 480 ADMINISTRATION OF	EO 12163	SEC 1-102	VOL. I
	EO 12220	SEC 1-2	VOL. I
REORGANIZATION PLAN NO. 2 OF 1979	RP NO. 2		VOL. I
IDEOLOGY			
RECOGNITION POLICY	S RES 91-205		VOL. II
IFAD			
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
AUTHORIZATION OF APPROPRIATIONS	PL 87-195	SEC 103(G)(2)	VOL. I
IFC			
CAPITAL STOCK AUTHORIZATION FOR INCREASE OF	PL 84-350	SEC 11	VOL. III
SUBSCRIPTIONS PAID	PL 84-350	SEC 7	VOL. III
CAPITAL STOCK INCREASE AUTHORIZATION FOR	PL 84-350	SEC 11	VOL. III
	PL 84-350	SEC 12	VOL. III
COURTS			
JURISDICTION	PL 84-350	SEC 8	VOL. III
VENUE	PL 84-350	SEC 8	VOL. III
DIVIDENDS	PL 84-350	SEC 7	VOL. III
LIMITATIONS ON THE PRESIDENT	PL 84-350	SEC 5	VOL. III

			PAGE
IFC—CONTINUED			
MEMBER BANKS	PL 84-350	SEC 6	VOL. III
NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS	PL 84-350	SEC 4	VOL. III
PRIVILEGES AND IMMUNITIES	PL 84-350	SEC 8	VOL. III
U.S. MEMBERSHIP			
ACCEPTANCE OF	PL 84-350	SEC 2	VOL. III
WORLD BANK RELATIONS WITH	PL 79-171	SEC 21	VOL. III
IMF			
(SEE ALSO SPECIAL DRAWING RIGHTS)			
ACCEPTANCE OF MEMBERSHIP			
U.S.	PL 79-171	SEC 2	VOL. III
AGREEMENT ESTABLISHING			
AMENDMENTS	PL 79-171	SEC 24	VOL. III
AGRICULTURAL EXPORT SUBSIDIES	PL 79-171	SEC 44	VOL. III
APARTHEID			
CONGRESSIONAL INSTRUCTIONS	PL 79-171	SEC 43(B)	VOL. III
ARTICLES ESTABLISHING			
INTERPRETATION OF	PL 79-171	SEC 13	VOL. III
BALANCE-OF-PAYMENTS FINANCING	PL 96-389	SEC 4(A)	VOL. III
REPORTS TO CONGRESS	PL 79-171	SEC 34	VOL. III
BANK BAILOUT	PL 79-171	SEC 46	VOL. III
BORROWING FROM OIL EXPORTING COUNTRIES			
REPORTS TO CONGRESS	PL 79-171	SEC 34	VOL. III
CAPITAL STOCK			
U.S. SHARE INCREASE	PL 79-171	SEC 27	VOL. III
CAPITAL STOCK INCREASE			
AUTHORIZATION FOR	PL 79-171	SEC 51	VOL. III
COMMUNIST MEMBERS	PL 93-618	SEC 502	VOL. III
COMMUNIST PARTICIPATION			
CONGRESSIONAL INSTRUCTIONS	PL 79-171	SEC 43(A)	VOL. III
COUNCIL CREATED			
U.S. OBJECTIONS	PL 79-171	SEC 27	VOL. III
DEBT RESCHEDULING			
IMPACT ON U.S.	PL 79-171	SEC 29	VOL. III
DOLLAR-SPECIAL DRAWING RIGHTS SUBSTITUTION ACCOUNT			
NEGOTIATION FOR	PL 79-171	SEC 35	VOL. III
ECONOMIC ADJUSTMENT PROGRAMS			
U.S. SUPPORT FOR	PL 79-171	SEC 33	VOL. III
ECONOMIC ADJUSTMENT PROGRAMS FOR PARTICIPANTS	PL 79-171	SEC 45	VOL. III
EXCHANGE RATE STABILITY	PL 79-171	SEC 40	VOL. III
INTEREST RATES	PL 79-171	SEC 48	VOL. III
INTERNATIONAL COOPERATION	PL 79-171	SEC 47	VOL. III
INTERNATIONAL DEBT			
REVIEW OF	PL 100-418	SEC 3113	VOL. III
LOANS TO	PL 79-171	SEC 17	VOL. III
LOANS TO EL SALVADOR AND NICARAGUA			
ASSISTANCE TO PRIVATE SECTOR	PL 79-171	SEC 38	VOL. III
PLO MEMBERSHIP			
U.S. RESPONSE	PL 79-171	SEC 37	VOL. III
QUOTA INCREASE	PL 79-171	SEC 41	VOL. III
RECYCLING SURPLUSES FROM OIL EXPORTING COUNTRIES	PL 96-389	SEC 4(A)	VOL. III
REQUEST FOR INFORMATION	PL 79-171	SEC 8	VOL. III
SPECIAL DRAWING RIGHTS			
SUPPLEMENTAL APPROPRIATION, 1984	PL 98-181	SEC 1101	VOL. III
SPECIAL DRAWING RIGHTS ALLOCATION			
CONGRESSIONAL CONSULTATION	PL 90-349	SEC 5(B)	VOL. III
TAIWAN AS MEMBER	PL 79-171	SEC 36	VOL. III
TRADE PROMOTION	PL 79-171	SEC 49	VOL. III
U.S. QUOTA	PL 79-171	SEC 20, 22	VOL. III
INCREASE AUTHORIZATION	PL 79-171	SEC 25	VOL. III
IMMIGRATION (FOREIGN)			
ALIENS			
GRANTING LAWFUL RESIDENT STATUS TO	PL 100-204	SEC 901	VOL. II
PROHIBITION ON EXCLUSION OR DEPORTATION ON CERTAIN GROUNDS	PL 100-204	SEC 901	VOL. II
AMERASIAN CHILDREN			
RESETTLEMENT IN U.S.	PL 100-204	SEC 905	VOL. II
CUBAN NATIONALS			

		PAGE
IMMIGRATION (FOREIGN)--CONTINUED		
PROCESSING FOR ADMISSION TO U.S.	PL 100-204 SEC 903	VOL. II
FREEDOM FOR SOVIET JEWS	PL 100-204 SEC 1202	VOL. II
FREEDOM TO EMIGRATE	PL 93-618 SEC 402	VOL. III
WAIVING TRADE RESTRICTIONS	EO 12051	VOL. III
ILLEGAL ALIENS		
ECONOMIC INCENTIVES TO ALLEVIATE	PL 99-603 SEC 601	VOL. II
INTERDICTION OF	EO 12324	VOL. II
LATIN AMERICA		
RYUKYUAN MIGRANTS	PL 86-735 SEC 4	VOL. I
IMMIGRATION (FOREIGN) FREEDOM TO EMIGRATE	PL 100-222	613
IMMIGRATION (U.S.)		
ALIEN EMPLOYEES OF U.S. GOVERNMENT	PL 87-195 SEC 635(F)	VOL. I
AMERASIANS		
ADMISSION TO U.S.	PL 100-202 SEC 584	VOL. I
DEPORTATION		
FOREIGN AGENTS	PL 75-583 SEC 8	535
EXCLUSIONARY POLICIES		
WAIVER OF	PL 84-885 SEC 21	VOL. II
NONIMMIGRANTS	PL 79-291 SEC 7(C) FN	VOL. II
POWERS AND DUTIES OF THE SECRETARY OF STATE	PL 82-414 SEC 104(A)	VOL. II
PRIVILEGES AND IMMUNITIES	PL 79-291 SEC 7-9	VOL. II
IMMIGRATION AND NATIONALITY ACT OF 1952	PL 82-414	VOL. II
NATIONAL EMERGENCY PROVISIONS	66 STAT 190	VOL. II
IMMIGRATION REFORM AND CONTROL ACT OF 1986	PL 99-603	VOL. II
IMMUNITIES		
(SEE PRIVILEGES AND IMMUNITIES)		
IMPORT DUTIES		
(SEE ANTIDUMPING)		
(SEE TARIFFS)		
(SEE TRADE AGREEMENTS)		
(SEE TRADE EXPANSION ACT OF 1962)		
(SEE TRADE)		
IMPORT LICENSES		
(SEE ALSO IMPORT REGULATIONS)		
AUCTION OF	PL 96-39 SEC 1102	VOL. III
IMPORT REGULATIONS		
EDUCATIONAL AND CULTURAL MATERIALS	EO 12047	VOL. II
	PL 89-259	VOL. II
ENDANGERED SPECIES	PL 93-205 SEC 9(D)	203
IMPORTS		
CANADIAN ARTICLES RELIEF FROM	PL 100-449 SEC 302	VOL. III
COPPER		
IMPACT ON U.S. INDUSTRY	PL 98-573 SEC 247	VOL. III
DOWNSTREAM PRODUCTS	PL 71-361 SEC 780	VOL. III
DUTY-FREE TREATMENT		
ELIGIBLE ARTICLES	PL 93-618 SEC 503	VOL. III
ELIGIBLE COUNTRIES	PL 93-618 SEC 502	VOL. III
TERMINATION OF	PL 93-618 SEC 504	VOL. III
EDUCATIONAL AND CULTURAL MATERIALS		
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)		
FISH		
TUNA	PL 81-764 SEC 6	115
	PL 81-764 SEC 8	117
FISH PRODUCTS		
BARRED WHEN U.S. VESSELS SEIZED	PL 83-680 SEC 8	186
PENALTIES	PL 83-680 SEC 8	186
FOREIGN MARKET VALUE	PL 71-361 SEC 773	VOL. III
HOG AND PORK PRODUCTS		
CANADIAN	PL 98-573 SEC 250	VOL. III
IRAN		
PROHIBITIONS ON	EO 12613	VOL. III
IVORY		
MORATORIUM ON	PL 100-478 SEC 2202	394
MACHINE TOOLS		
RESTRICTIONS ON	PL 100-418 SEC 1501	VOL. III
RESTRICTION AGREEMENTS		
CONSULTATIONS REQUIRED OF PRESIDENT	PL 71-361 SEC 761	VOL. III
SOUTH AFRICA		
PROHIBITIONS ON	PL 99-440 TITLE III	VOL. III

		PAGE
INDIA-U.S. RELATIONS		
CULTURAL EXCHANGE FUND	PL 98-164 SEC 901	VOL. II 334
NUCLEAR MATERIAL EXPORT	EO 12218	
NUCLEAR MATERIALS EXPORT OF	PL 98-164 SEC 1007	VOL. II 333
NUCLEAR MATERIALS EXPORT	EO 12055	
INDIAN OCEAN		
MILITARY FORCES DEPLOYED	PL 94-329 SEC 407	VOL. I
INDIGENOUS PEOPLE		
MDB PROJECTS IMPACT ON	PL 95-118 SEC 1605	VOL. III
INDOCHINA WAR		
CONGRESSIONAL AUTHORIZATION REQUIRED	PL 93-126 SEC 13	VOL. II
INTERNATIONAL COMMISSION OF CONTROL AND SUPERVISION	PL 93-559 SEC 48	VOL. I
LIMITATION ON FUNDS FOR	PL 93-189 SEC 31	VOL. I
MIAS		
CONGRESSIONAL COMMITTEE CREATED	H RES 94-335	VOL. II
TRADE RETALIATION	PL 93-618 SEC 403	VOL. III
U.N. ACTIONS	PL 94-141 SEC 503	VOL. II
POWS		
INTERNATIONAL INSPECTION TEAMS	H RES 94-335 SEC 2	VOL. II
PROHIBITING FUNDS FOR	PL 93-126 SEC 13	VOL. II
TERMINATION OF	PL 93-189 SEC 30	VOL. I
TONKIN GULF RESOLUTION	PL 88-408	VOL. II
	PL 88-408 NOTE	VOL. II
REPEALED	PL 91-672 SEC 12	VOL. I
VIETNAM AGREEMENT (1973)	PL 93-189 SEC 34	VOL. I
INDOCHINA-U.S. RELATIONS		
MILITARY AID PROHIBITION	PL 94-212 SEC 738	VOL. I
INDOCHINESE REFUGEE RESETTLEMENT AND PROTECTION ACT OF 1987	PL 100-202 TITLE VIII	VOL. II
INDUS BASIN DEVELOPMENT		
U.S. CONTRIBUTIONS	PL 87-195 SEC 301-303	VOL. I
INFANT FEEDING PRACTICES		
INTERNATIONAL CODE ON	PL 97-241 SEC 504	VOL. II
REPORT TO CONGRESS	PL 97-113 SEC 301(B)	VOL. I
INFORMATION		
FREEDOM OF TRANSFER	PL 95-426 SEC 603	VOL. II
INFORMATION OFFICES (FOREIGN)	PL 95-105 SEC 504	VOL. II
INSPECTOR GENERAL ACT OF 1978	PL 95-452	582
INSPECTOR GENERAL, OFFICE OF		
AUTHORITY	PL 95-452 SEC 6	588
FUNCTIONS TRANSFERRED TO	PL 95-452 SEC 9	600
REPORTS TO CONGRESS	PL 95-452 SEC 5	584
INSTITUTE FOR SCIENTIFIC AND TECHNOLOGICAL COOPERATION	EO 12163 SEC 1-4	VOL. I
	PL 96-53 SEC 401	VOL. I
INTELLECTUAL PROPERTY (U.S.)		
PROTECTION OF	PL 100-418 SEC 2206	VOL. III
INTELLECTUAL PROPERTY RIGHTS		
INADEQUATE PROTECTION OF COUNTRY IDENTIFICATION	PL 93-618 SEC 182	VOL. III
PROTECTION OF	PL 100-418 SEC 1341	VOL. III
INTELLIGENCE (FOREIGN)	EO 12333	VOL. II
ACTIVITIES		
CONDUCT OF	EO 12333 SEC 2.1	VOL. II
ASSASSINATION PROHIBITION	EO 12333 SEC 2.11	VOL. II
DEFENSE, DEPARTMENT OF	EO 12333 SEC 1.11	VOL. II
ELECTRONIC SURVEILLANCE		
AUTHORIZATION TO USE	50 USC 1802	VOL. II
CIVIL LIABILITY	50 USC 1810	VOL. II
CRIMINAL SANCTIONS	50 USC 1809	VOL. II
DEFINITION	50 USC 1801(F)	VOL. II
REPORT TO CONGRESS	50 USC 1808	VOL. II
USE OF INFORMATION ACQUIRED	50 USC 1806	VOL. II
ENERGY, DEPARTMENT OF	EO 12333 SEC 1.13	VOL. II
FBI	EO 12333 SEC 1.14	VOL. II
NATIONAL FOREIGN INTELLIGENCE ADVISORY GROUPS	EO 12333 SEC 1.3	VOL. II
OVERSIGHT BOARD	EO 12334	VOL. II
OVERSIGHT OF BY CONGRESS	EO 12333 SEC 3.1	VOL. II
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD	EO 12537	VOL. II
SENIOR OFFICIALS	EO 12333 SEC 1.7	VOL. II
STATE, DEPARTMENT OF	EO 12333 SEC 1.9	VOL. II
TREASURY, DEPARTMENT OF	EO 12333 SEC 1.10	VOL. II
INTELLIGENCE		
SURVEILLANCE DEFINITIONS	50 USC 1801	VOL. II
INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1989	PL 100-453	VOL. I

		PAGE
INTELLIGENCE, PERMANENT SELECT COMMITTEE ON	H RULE XLVIII	606
INTELLIGENCE, SELECT COMMITTEE ON		604
ESTABLISHMENT OF	S RES 94-400	VOL. II
INTELSAT AGREEMENT	PL 99-93 SEC 146	
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS		
CHILE	PL 93-189 SEC 35	VOL. I
INTER-AMERICAN DEVELOPMENT BANK (SEE IADB)		
INTER-AMERICAN DEVELOPMENT BANK ACT	PL 86-147	VOL. III
INTER-AMERICAN FOUNDATION		
APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
BOARD OF DIRECTORS	PL 91-175 SEC 401	VOL. I
CAPITAL STOCK	PL 91-175 SEC 401	VOL. I
LEGAL CAPACITY AS CORPORATION	PL 91-175 SEC 401	VOL. I
PURPOSE OF	PL 91-175 SEC 401	VOL. I
SOCIAL PROGRESS TRUST FUND	PL 93-189 SEC 36	VOL. I
STATE DEPARTMENT PERSONNEL	PL 91-175 SEC 401	VOL. I
TAXATION OF	PL 91-175 SEC 401	VOL. I
INTER-AMERICAN INSTITUTE FOR COOPERATION ON AGRICULTURE		
U.S. CONTRIBUTION TO, 1982-83	PL 97-241 SEC 105	VOL. II
INTER-AMERICAN INVESTMENT COOPERATION ACT	PL 98-473 TITLE II	VOL. III
INTER-AMERICAN SOCIAL DEVELOPMENT INSTITUTE (SEE INTER-AMERICAN FOUNDATION)		
INTER-AMERICAN SYSTEM (SEE RIO TREATY OF 1947)		
INTER-AMERICAN TROPICAL TUNA COMMISSION		
U.S. PARTICIPATION IN	PL 81-764	117
INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE	PL 98-373 SEC 107 EO 12501 SEC 7	421 427
INTERAGENCY GROUP ON HUMAN RIGHTS AND FOREIGN ASSISTANCE	PL 96-533 SEC 710	VOL. I
INTERAGENCY TRADE DATA ADVISORY COMMITTEE		
ESTABLISHMENT OF	PL 100-418 SEC 5402	VOL. III
INTERGOVERNMENTAL COMMITTEE FOR EUROPEAN MIGRATION		
U.S. MEMBERSHIP IN	PL 87-510 SEC 2	VOL. II
INTERIOR, SECRETARY OF		
ENDANGERED SPECIES REGULATION OF	PL 93-205 SEC 10(F)(5)	210
FISHERIES		
TUNA	PL 81-764 SEC 6	115
MICRONESIAN CLAIMS	PL 92-39 SEC 101-102	502
TRUST TERRITORY OF THE PACIFIC ISLANDS	PL 83-451 PL 92-257	507 511
INTERNAL SECURITY ACT		
PASSPORTS		
COMMUNIST ORGANIZATIONS	64 STAT 987	VOL. II
INTERNATIONAL ADVISORY COMMISSION FOR THE CARIBBEAN REGION	PL 99-83 SEC 714	VOL. I
INTERNATIONAL AGREEMENTS		
(SEE ALSO INDIVIDUAL AGREEMENTS)		
(SEE EXECUTIVE-LEGISLATIVE RELATIONS)		
CONGRESSIONAL TRANSMITTAL	PL 92-403	VOL. II
EXPENSES IN ARBITRATING	PL 84-885 SEC 38	VOL. II
PRIOR CONSULTATION	PL 92-403	VOL. II
REPORTING TO CONGRESS	22 CFR 181	VOL. II
CRITERIA	22 CFR 181.2	VOL. II
TRANSMITTAL OF TEXT TO CONGRESS		
ENFORCING REQUIREMENT OF	PL 100-204 SEC 139	VOL. II
YALTA EXECUTIVE AGREEMENTS		
U.S. POLICY TOWARD APPLICATION	PL 99-93 SEC 804	VOL. II
INTERNATIONAL ANTI-TERRORISM COMMITTEE		
ESTABLISHMENT OF	PL 99-83 SEC 506	VOL. I
PROPOSAL FOR	PL 99-399 SEC 701	VOL. II
INTERNATIONAL ATOMIC ENERGY AGENCY		
(SEE IAEA)		

		PAGE
INTERNATIONAL ATOMIC ENERGY AGENCY PARTICIPATION ACT OF 1957	PL 85-177	306
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (SEE WORLD BANK)		
INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS ACT	PL 97-325	VOL. I
INTERNATIONAL CENTER ACT	PL 90-553	VOL. II
INTERNATIONAL CHILD ABDUCTION REMEDIES ACT	PL 100-300	VOL. II
INTERNATIONAL CIVIL AVIATION ORGANIZATION		
ENFORCEMENT OF STANDARDS	PL 99-83 SEC 554	VOL. I
U.S. PARTICIPATION IN	PL 84-885 SEC 6	VOL. II
INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949	PL 81-455	450
INTERNATIONAL COFFEE AGREEMENT ACT OF 1980	PL 96-599	VOL. III
EXTENSION OF	PL 100-418 SEC 1123	VOL. III
INTERNATIONAL COMMISSION FOR THE SCIENTIFIC INVESTIGATION OF TUNA		
U.S. PARTICIPATION IN	PL 81-764	117
INTERNATIONAL COMMISSIONS		
AUTHORIZATION OF APPROPRIATIONS, 1988-89	PL 100-204 SEC 103	VOL. II
FOREIGN SERVICE OFFICERS ASSIGNED TO	PL 96-465 SEC 503	VOL. II
HERBICIDES CONTAINING DIOXIN		
USE OF	PL 98-164 SEC 135	VOL. II
INTERNATIONAL COMMITTEE FOR EUROPEAN MIGRATION		
U.S. MEMBERSHIP IN	PL 100-204 SEC 745	VOL. II
INTERNATIONAL COMMITTEE OF THE RED CROSS		
CONTRIBUTION TO	PL 100-204 SEC 742	VOL. II
	PL 99-93 SEC 109	VOL. II
INTERNATIONAL COMMUNICATION AGENCY (SEE USIA)		
INTERNATIONAL COMMUNICATIONS SEE (COMMUNICATIONS, INTERNATIONAL)		
INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, OFFICE OF	PL 84-885 SEC 35	VOL. II
INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING	PL 99-570 SEC 2021	VOL. I
INTERNATIONAL CONFERENCES AND CONTINGENCIES		
AUTHORIZATION OF APPROPRIATIONS, 1988-89	PL 100-204 SEC 102	VOL. II
INTERNATIONAL CONVENTION FOR THE CONSERVATION OF ATLANTIC TUNAS		
U.S. PARTICIPATION	PL 94-70	124
INTERNATIONAL CONVENTION ON THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM		
APPROVAL OF	PL 100-418 SEC 1203	VOL. III
INTERNATIONAL COOPERATION TO PROTECT BIOLOGICAL DIVERSITY	PL 100-530	VOL. I
INTERNATIONAL COTTON ADVISORY COMMITTEE		
U.S. MEMBERSHIP	PL 94-350 SEC 113	VOL. II
INTERNATIONAL CULTURAL AND TRADE CENTER COMMISSION		
ESTABLISHMNENT OF	PL 100-113 SEC 7	VOL. III
INTERNATIONAL CULTURAL EXCHANGE AND TRADE FAIR PARTICIPATION ACT OF 1956		
REPEALED	PL 87-256 SEC 111	VOL. II
INTERNATIONAL DEBT MANAGEMENT ACT OF 1988	PL 100-418 SEC 3101	VOL. III
FINDINGS	PL 100-418 SEC 3102	VOL. III
INTERNATIONAL DEBT MANAGEMENT AUTHORITY		
CONGRESSIONAL AUTHORITY TO CREATE	PL 100-418 SEC 3111	VOL. III
ESTABLISHMENT OF	PL 100-418 SEC 3111	VOL. III
INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1975	PL 94-161	VOL. I
INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1977	PL 95-88 SEC 1	VOL. I
INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1978	PL 95-424	VOL. I

			PAGE
INTERNATIONAL DEVELOPMENT ASSOCIATION (SEE IDA)			
INTERNATIONAL DEVELOPMENT ASSOCIATION ACT	PL 86-565		VOL. III
INTERNATIONAL DEVELOPMENT COOPERATION ACT OF 1979	PL 96-53	SEC 1	VOL. I
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SEE IDCA)			
INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT	PL 95-223		VOL. III
INTERNATIONAL ENERGY AGENCY			
INFORMATION EXCHANGE			
SUBMISSION OF U.S. INFORMATION	PL 94-163	SEC 254(A)	358
INTERNATIONAL ENERGY PROGRAM			
ADVISORY COMMITTEES			
CREATION OF	PL 94-152	SEC 3	338
	PL 94-163	SEC 253	357
	PL 96-133		372
EXTENSION OF	PL 94-163	SEC 251(A)	350
FULFILLING U.S. OBLIGATIONS			
INFORMATION EXCHANGE WITH INTERNATIONAL ENERGY AGENCY	PL 94-163	SEC 254	358
VOLUNTARY AGREEMENTS (SEE ALSO ENERGY, INTERNATIONAL)	PL 94-163	SEC 252	351
INTERNATIONAL ENVIRONMENTAL PROTECTION ACT OF 1983	PL 98-164	SEC 701	379
INTERNATIONAL FINANCE CORPORATION (SEE IFC)			
INTERNATIONAL FINANCE CORPORATION ACT	PL 84-350		VOL. III
INTERNATIONAL FINANCIAL INSTITUTIONS (SEE MDBS)			
INTERNATIONAL FINANCIAL INSTITUTIONS ACT	PL 95-118		VOL. III
INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT BOARD FOR	PL 87-195	SEC 298	VOL. I
INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (SEE IFAD)			
INTERNATIONAL GAMES FOR THE HANDICAPPED	PL 99-93	SEC 207	VOL. II
INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT-	PL 94-472		VOL. III
ADMINISTRATION OF	EO 11961		VOL. III
INTERNATIONAL JOINT COMMISSION-	PL 94-350	SEC 115	VOL. II
APPROPRIATIONS, 1989	PL 100-459	TITLE III	VOL. II
ENTERTAINMENT EXPENSES	PL 84-885	SEC 19	VOL. II
INTERNATIONAL JUTE ORGANIZATION			
U.S. MEMBERSHIP IN	PL 99-93	SEC 145	VOL. II
INTERNATIONAL LAW (SEE ARBITRATION) (SEE OAS) (SEE U.N.)			
INTERNATIONAL LEAD AND ZINC STUDY GROUP			
U.S. MEMBERSHIP	PL 94-350	SEC 113	VOL. II
INTERNATIONAL LENDING SUPERVISION ACT OF 1983	PL 98-181	SEC 901	VOL. III
INTERNATIONAL MARITIME AND PORT SECURITY ACT	PL 99-399	SEC 901	VOL. II
INTERNATIONAL MARITIME ORGANIZATION			
SEAPORT AND SHIPBOARD SECURITY AGAINST TERRORISTS	PL 99-399	SEC 902	VOL. II
INTERNATIONAL MONETARY FUND (SEE IMF)			
INTERNATIONAL MONETARY SYSTEM			
ROLE OF GOLD REPORTS TO CONGRESS	PL 96-389	SEC 10	VOL. III
INTERNATIONAL NARCOTICS CONTROL ACT OF 1986	PL 99-570	SEC 2001	VOL. I
INTERNATIONAL NATURAL RUBBER AGREEMENT APPROPRIATION AUTHORIZATION ACT	PL 96-271		VOL. III
INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION	PL 83-579		106
U.S. MEMBERSHIP ON	PL 83-579	SEC 3	107
INTERNATIONAL ORGANIZATIONS (SEE ALSO RESPECTIVE INSTITUTIONS)			
APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I

			PAGE
INTERNATIONAL ORGANIZATIONS--CONTINUED			
AUTHORIZATION OF			
APPROPRIATIONS, 1988-89--	PL 100-204	SEC 102	VOL. II
DEFINED----------	PL 79-291	SEC 1	VOL. II
DESIGNATED BY PRESIDENT----	PL 79-291	SEC 1	VOL. II
FOREIGN AID PERSONNEL			
ASSIGNED TO----------	PL 87-195	SEC 628	VOL. I
OAS			
APPROPRIATIONS, 1989--	PL 100-461	TITLE I	VOL. I
PERSONNEL			
PEACE CORPS			
CONTRIBUTION--------	PL 87-293	SEC 14	VOL. I
POLICIES OF MEMBER STATES			
REPORT TO CONGRESS----	PL 98-164	SEC 117	VOL. II
PRIVILEGES AND IMMUNITIES--	PL 79-291	SEC 2	VOL. II
IMMIGRATION----------	PL 79-291	SEC 7-9	VOL. II
TAXES----------	PL 79-291	SEC 3-6	VOL. II
RESPONSIBILITIES OF U.S.			
REPRESENTATIVES TO-------	PL 99-93	SEC 140	VOL. II
TRANSFER OF U.S. GOVERNMENT			
EMPLOYEES TO----------	PL 91-175	SEC 503	VOL. I
U.S. CONTRIBUTIONS TO------	PL 100-461	TITLE I	VOL. I
LIMITATION ON----------	PL 92-544		VOL. II
U.S. VOLUNTARY			
CONTRIBUTIONS----------	PL 99-83	SEC 402	VOL. I
REPORT TO CONGRESS----	PL 87-195	SEC 306	VOL. I
UNDP			
APPROPRIATIONS, 1989--	PL 100-461	TITLE I	VOL. I
INTERNATIONAL ORGANIZATIONS AND CONFERENCES			
REQUIREMENTS RELATING TO			
FUNDS FOR----------	PL 99-415		449
INTERNATIONAL ORGANIZATIONS AND PROGRAMS			
APPROPRIATIONS, 1989-------	PL 100-461	TITLE I	VOL. I
LIMITATION OF FUNDS			
APPROPRIATED----------	PL 100-461	SEC 526	VOL. I
INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT----------	PL 79-291		VOL. II
INTERNATIONAL PEACEKEEPING ACTIVITIES			
AUTHORIZATION OF			
APPROPRIATIONS, 1988-89--	PL 100-204	SEC 102	VOL. II
INTERNATIONAL PRIVATE INVESTMENT ADVISORY COUNCIL			
ON FOREIGN AID----------	PL 87-195	SEC 601	VOL. I
INTERNATIONAL RUBBER STUDY GROUP			
U.S. MEMBERSHIP----------	PL 94-350	SEC 113	VOL. II
INTERNATIONAL SCIENTIFIC AND TECHNOLOGICAL COOPERATION,			
COUNCIL ON----------	PL 96-53	SEC 407	VOL. I
INTERNATIONAL SECURITY AND DEVELOPMENT ASSISTANCE			
AUTHORIZATIONS ACT OF 1983--	PL 98-151	SEC 101(8)(2)	VOL. I
INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT			
OF 1980----------	PL 96-533		VOL. I
INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT			
OF 1981----------	PL 97-113		VOL. I
INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT			
OF 1985----------	PL 99-83		VOL. I
INTERNATIONAL SECURITY ASSISTANCE ACT OF 1977------	PL 95-92		VOL. I
INTERNATIONAL SECURITY ASSISTANCE ACT OF 1978------	PL 95-384		VOL. I
INTERNATIONAL SECURITY ASSISTANCE ACT OF 1979-------	PL 96-92		VOL. I
INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT			
CONTROL ACT OF 1976----------	PL 94-329		VOL. I
INTERNATIONAL SEED TESTING ASSOCIATION			
U.S. MEMBERSHIP----------	PL 94-350	SEC 113	VOL. II
INTERNATIONAL SUGAR AGREEMENT 1977, IMPLEMENTATION----	PL 96-236		VOL. III
INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION (INTELSAT)			
U.S. POLICY----------	PL 99-93	SEC 146	VOL. II
INTERNATIONAL TRADE			
FOREIGN TELECOMMUNICATIONS			
TRADE BARRIERS----------	PL 100-418	SEC 1374	VOL. III
INTERNATIONAL TRADE AND INVESTMENT ACT----------	PL 98-573	SEC 301	VOL. III
	PL 98-573	TITLE III	VOL. III
INTERNATIONAL TRADE COMMISSION- (SEE ALSO TRADE)	PL 93-618	SEC 162-163	VOL. III

			PAGE
INTERNATIONAL TRADE COMMISSION--CONTINUED			
ADVICE TO PRESIDENT	PL 93-618	SEC 131	VOL. III
ANTIDUMPING	PL 93-618	SEC 201	VOL. III
AUTHORIZATION OF APPROPRIATIONS	PL 71-361	SEC 330(E)	VOL. III
COOPERATION WITH OTHER AGENCIES	PL 71-361	SEC 334	VOL. III
	PL 93-618	SEC 503	VOL. III
DUTY-FREE ARTICLES	PL 93-618	SEC 406	VOL. III
EAST-WEST TRADE	PL 93-618	SEC 203	VOL. III
IMPORT RELIEF	PL 71-361	SEC 330	VOL. III
ORGANIZATION	PL 93-618	SEC 608	VOL. III
REPORTS TO CONGRESS	PL 71-361	SEC 333	VOL. III
REPRESENTATION IN COURT			
UNFAIR IMPORT PRACTICES			
CEASE AND DESIST ORDER	PL 71-361	SEC 337	VOL. III
INVESTIGATION OF	PL 71-361	SEC 337	VOL. III
VOTING	PL 71-361	SEC 330(D)	VOL. III
INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, CONVENTION	PL 93-205	SEC 3(4)	197
INTERNATIONAL WHALING COMMISSION			
U.S. PARTICIPATION IN	PL 81-676	SEC 3	154
INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION			
DESIGNATION OF	PL 100-204	SEC 1105	384
INTERNATIONALLY PROTECTED PERSONS			
CRIMES AGAINST	PL 94-467		VOL. II
INTERPARLIAMENTARY GROUPS (SEE ALSO CONGRESS, INTERPARLIAMENTARY GROUPS)			
ADDITIONAL AUTHORIZATION, 1984-85	PL 98-164	SEC 109(C)	448
	PL 98-164	SEC 109(C)	VOL. II
CANADA-U.S. INTERPARLIAMENTARY GROUP	PL 86-42		441
CONGRESSIONAL PARTICIPATION IN	PL 86-628	SEC 105	434
INTERPARLIAMENTARY UNION			
AMERICAN GROUP	PL 74-170		437
	PL 85-474		440
BUREAU ON ARBITRATION	PL 74-170	SEC 1	437
REPORTS TO CONGRESS	PL 74-170	SEC 2	438
MEXICO-U.S. INTERPARLIAMENTARY GROUP	PL 86-420		443
NORTH ATLANTIC ASSEMBLY	PL 84-689		445
UNITED STATES-EUROPEAN COMMUNITY			
AUTHORIZATION OF APPROPRIATIONS	PL 98-164	SEC 109(C)	448
INTERVENTION ON THE HIGH SEAS ACT	PL 93-248		95
INTERVENTIONS (MILITARY)			
COMMUNISM			
CUBA	PL 87-733		VOL. II
INVESTMENT			
DEFINED	PL 87-195	SEC 238	VOL. I
FOREIGN RESISTANCE TO			
FOREIGN AID CUT-OFF	PL 87-195	SEC 620(L)	VOL. I
GUARANTIES			
DISPUTES	PL 87-195	SEC 635	VOL. I
SMALL BUSINESS	PL 87-195	SEC 602	VOL. I
INVESTMENT ABROAD (PRIVATE)			
ADMINISTRATION OF	EO 11961		VOL. III
ADVISORY COUNCIL ON	PL 87-195	SEC 601	VOL. I
INFORMATION GATHERING	PL 94-472		VOL. III
INVESTMENT IN U.S.			
COMMITTEE ON FOREIGN INVESTMENT IN U.S.			
ESTABLISHED	EO 11858	SEC 1	VOL. III
MEMBERS	EO 11858	SEC 1(A)	VOL. III
RESPONSIBILITES	EO 11858	SEC 1(B)	VOL. III
INFORMATION GATHERING	PL 94-472		VOL. III
STUDY OF	PL 93-479	SEC 2	VOL. III
IRAN			
BAHA'IS PERSECUTION OF	PL 100-204	SEC 1236	VOL. II
HUMAN RIGHTS VIOLATIONS SENSE OF CONGRESS	PL 100-204	SEC 1235	VOL. II
SCUBA GEAR PURCHASES EXPORT PROHIBITIONS	52 FR 36749		VOL. III
IRAN-IRAQ RELATIONS			
CEASEFIRE AND SOLUTION TO CONFLICT	PL 100-96		610
	PL 100-204	SEC 1234	VOL. II
U.S. POLICY TOWARD			
IRAN-U.S. RELATIONS			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
CLAIMS BY U.S. NATIONALS	PL 99-93	TITLE V	520

			PAGE
IRAN-U.S. RELATIONS--CONTINUED			
ESCROW ACCOUNTS			
ESTABLISHED	EO 12276		VOL. III
HOSTAGE CLAIMS			
NON-PROSECUTION OF	EO 12283		VOL. III
HOSTAGES	PL 96-449	SEC 301	VOL. II
IMPORTS PROHIBITION	EO 12613		VOL. III
IRANIAN GOVERNMENT ASSETS			
TRANSFER OF	EO 12277		VOL. III
	EO 12278		VOL. III
LITIGATION			
SUSPENSION OF	EO 12294		VOL. III
PROPERTY BLOCKED	EO 12170		VOL. III
PROPERTY OF THE FORMER SHAH			
TRANSFER OF	EO 12284		VOL. III
TRANSACTIONS PROHIBITED	EO 12205		VOL. III
TRANSACTIONS WITH IRAN			
REVOCATION OF			
PROHIBITIONS	EO 12282		VOL. III
IRAQ-IRAN RELATIONS			
CEASEFIRE AND SOLUTION TO			
CONFLICT	PL 100-96		610
IRAQ-U.S. RELATIONS			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
IRELAND-U.S. RELATIONS			
AGRICULTURE			
EXCHANGING INFORMATION	PL 99-198	SEC 1420	VOL. I
COUNTERPART FUNDS	PL 83-665	SEC 417	VOL. I
PROMOTING RECONCILIATION	PL 99-415		VOL. I
ISRAEL			
ARMS EXPORT CONTROL ACT			
UTILIZING LOANS UNDER	PL 100-461	SEC 528	VOL. I
CONSTRUCTING NEW U.S.			
FACILITIES			
PROHIBITION AGAINST	PL 100-204	SEC 130	VOL. II
ECONOMIC CONDITIONS			
IMPACT ON FOREIGN DEBT	PL 99-83	SEC 1205	VOL. I
ECONOMIC SUPPORT FUND	PL 99-83	SEC 202	VOL. I
EXPULSION FROM U.N.			
U.S. REACTION	PL 98-164	SEC 115	VOL. II
ISRAEL-EGYPT RELATIONS			
PEACE PROCESS	PL 99-83	SEC 1210	VOL. I
ISRAEL-U.S. RELATIONS			
AIR BASE CONSTRUCTION	PL 87-195	SEC 561	VOL. I
ARMS SALES	PL 91-672	SEC 5	VOL. I
	PL 99-83	SEC 101(C)	VOL. I
DESALTING PLANT	PL 87-195	SEC 219	VOL. I
ESF			
ANNUAL APPROPRIATION	PL 100-461	SEC 530	VOL. I
MILITARY AID	PL 91-441	SEC 501	VOL. I
PEACE NEGOTIATIONS	PL 95-384	SEC 28	VOL. I
REFUGEE RESETTLEMENT			
ASSISTANCE	PL 96-60	SEC 103	VOL. II
REFUGEE RESETTLEMENT			
ASSISTANCE, 1982-83	PL 97-241	SEC 107	VOL. II
RFE/RL			
RELAY STATION	PL 100-202	TITLE V	VOL. II
	PL 100-459	TITLE V	VOL. II
TRADE AGREEMENTS	PL 98-573	SEC 401	VOL. III
	PL 98-573	TITLE IV	VOL. III
ITALY-U.S. RELATIONS			
AIR DEFENSE OF U.S.			
MILITARY BASES	PL 98-525	SEC 105	VOL. I
CLAIMS	PL 81-455	SEC 301-318	471
DISASTER AID AUTHORIZATION	PL 87-195	SEC 4958	VOL. I
J			
JAILS (FOREIGN)			
AMERICANS DETAINED IN	PL 95-105	SEC 108	VOL. II
JAMAICA			
FOREIGN AID			
NOTIFICATION			
REQUIREMENTS	PL 100-461	SEC 543	VOL. I
JAMAICA-U.S. RELATIONS			
ECONOMIC SUPPORT FUND			
AID CONTINGENT ON DRUG			
CONTROL	PL 99-83	SEC 610	VOL. I
FOREIGN AID, 1989	PL 100-461	TITLE II	VOL. I
JAPAN			
IMPORTS			
U.S. MADE AUTO PARTS	PL 100-418	SEC 1934	VOL. III
LDCS			
IMPORTS FROM	PL 100-418	SEC 2208	VOL. III
U.S. DEFENSE EXPENDITURES			
IN			
REPORT TO CONGRESS	PL 100-180	SEC 1011	VOL. I
	PL 100-456	SEC 1009	VOL. I
U.S. EXPORTS OF COAL TO			
SENSE OF CONGRESS	PL 100-418	SEC 1933	VOL. III

		PAGE
JAPAN-ARAB RELATIONS		
ECONOMIC BOYCOTT OF ISRAEL-	PL 100-418 SEC 2209	VOL. III
JAPAN-ISRAEL RELATIONS		
ECONOMIC BOYCOTT OF ISRAEL-	PL 100-418 SEC 2209	VOL. III
JAPAN-U.S. RELATIONS		
CONTRIBUTIONS TO COMMON DEFENSE	PL 98-94 SEC 1102	VOL. I
EXPOSITION, 1985		VOL. II
U.S. PARTICIPATION	PL 98-164 SEC 212	40
FISHERIES	PL 97-389 TITLE IV	114
	PL 83-579 SEC 14	43
FISHERY AGREEMENTS	PL 100-220 TITLE I	
FRIENDSHIP ACT		VOL. II
COMMISSION ESTABLISHED	PL 94-118 SEC 4	VOL. II
PURPOSE OF	PL 94-118 SEC 2	VOL. II
REPORTS TO CONGRESS	PL 94-118 SEC 5(B)	
U.S. CONTRIBUTION TO FUND	PL 94-118 NOTE	VOL. II
GLOBAL SECURITY		VOL. I
EXPANDED JAPANESE ROLE	PL 100-180 SEC 1012	VOL. I
	PL 100-456 SEC 1009	
JAPANESE AGRICULTURAL MARKETS ACCESS	PL 100-418 SEC 4608	VOL. I
JAPANESE DEFENSE OBJECTIVES	PL 99-93 SEC 812	VOL. II
JAPANESE TRADE WITH VIETNAM		VOL. I
SENSE OF CONGRESS	PL 100-180 SEC 1404	502
MICRONESIAN CLAIMS	PL 92-39 SEC 102	
PERSONAL VEHICLES OF U.S. MILITARY PERSONNEL	PL 98-525 SEC 653	VOL. I
RYUKYU CLAIMS	PL 89-296	499
TRADE AGREEMENTS	PL 93-618 SEC 126	VOL. III
INVESTIGATION OF BARRIERS	PL 100-418 SEC 1305	VOL. III
TRADE RELATIONS		VOL. III
SENSE OF CONGRESS	PL 100-418 SEC 1306	
JAPAN-UNITED STATES FRIENDSHIP ACT	PL 94-118	VOL. II
JAPAN-UNITED STATES FRIENDSHIP COMMISSION		VOL. II
APPROPRIATIONS, 1987	PL 94-118 NOTE	
JAPAN-UNITED STATES FRIENDSHIP TRUST FUND	PL 94-118 NOTE	VOL. II
APPROPRIATIONS, 1989	PL 100-459 TITLE V	VOL. II
JERUSALEM		VOL. II
NEW U.S. FACILITIES		619
PROHIBITION AGAINST	PL 100-204 SEC 130	
JEWISH HERITAGE WEEK	PL 100-292	VOL. III
JOHNSON ACT	PL 80-772	
JOINT COMMISSION ON RURAL RECONSTRUCTION IN CHINA		VOL. I
U.S. MEMBERSHIP IN	PL 83-665 SEC 536	
JORDAN SUPPLEMENTAL ECONOMIC ASSISTANCE AUTHORIZATION ACT OF 1985	PL 99-88 SEC 401	VOL. I
JORDAN-U.S. RELATIONS		VOL. I
ARMS SALES	PL 99-83 SEC 130	VOL. I
JOINT RESOLUTION ON	PL 99-162	VOL. I
FOREIGN AID	PL 96-533 SEC 712	VOL. I
FOREIGN ASSISTANCE	PL 99-88 SEC 402	VOL. I
MIDDLE EAST PEACE	PL 99-83 SEC 130	
JOURNALISM		VOL. II
INTERNATIONAL FREEDOM OF	PL 95-426 SEC 603	VOL. II
UNESCO CONTROL OF	PL 97-241 SEC 108-109	
JURISDICTION (COURTS)		VOL. III
TRADE INJURIES		
ADJUSTMENT ASSISTANCE	PL 87-794 SEC 320	
JUSTICE, DEPARTMENT OF		452
FOREIGN CLAIMS	PL 81-455 SEC 4	
INSPECTOR GENERAL		596
SPECIAL PROVISIONS	PL 95-452 SEC 8D	
K		
KAMPUCHEA-U.S. RELATIONS		
KHMER ROUGE		VOL. II
AID PROHIBITION	PL 98-164 SEC 1005	VOL. II
KAPLAN, JAN	PL 98-164 SEC 1006	
KOLLEK, TEDDY (MAYOR OF JERUSALEM)	PL 99-93 SEC 811	VOL. II
KONGSBERG TRADING COMPANY		VOL. III
SANCTIONS AGAINST	PL 100-418 SEC 2443(A)	
KONGSBERG VAAPENFABRIKK		VOL. III
SANCTIONS AGAINST	PL 100-418 SEC 2443(B)	
KOREA (REPUBLIC OF)-U.S. RELATIONS		VOL. I
ARMED FORCES MODERNIZATION	PL 95-384 SEC 23	VOL. I
COOPERATION IN U.S. INVESTIGATIONS	PL 95-92 SEC 28	VOL. I
DEFENSE ARTICLES TRANSFERRED	PL 91-652 SEC 3-4	

		PAGE
KOREA (REPUBLIC OF)-U.S. RELATIONS--CONTINUED		
DEMOCRATIZATION	PL 99-83 SEC 908	VOL. I
HUMAN RIGHTS	PL 94-329 SEC 412	VOL. I
KOREAN BEEF MARKET ACCESS	PL 100-418 SEC 4607	VOL. I
REDUCTION OF TROOPS IN	PL 95-105 SEC 512	VOL. II
TROOP WITHDRAWAL	PL 95-384 SEC 23	VOL. I
KOREA-U.S. RELATIONS		
FISHERY AGREEMENTS	PL 100-66 SEC 1	42
KRASNOYARSK RADAR		
ABM TREATY VIOLATION		
SENSE OF CONGRESS	PL 100-180 SEC 902	VOL. II
KRISTALLNACHT		
WEEK OF REMEMBRANCE OF	PL 100-632	639
L		
LABOR, SECRETARY OF		
(SEE ALSO TRADE INJURIES)		
CARIBBEAN BASIN INITIATIVE		
IMPACT STUDY	PL 98-67 SEC 216	VOL. III
TRADE INJURIES		
ADJUSTMENT ASSISTANCE	PL 93-618 SEC 280-282	VOL. III
LANGUAGE REQUIREMENTS		
FOREIGN AID PERSONNEL	PL 87-195 SEC 625	VOL. I
LANGUAGE TRAINING		
FOREIGN SERVICE	PL 96-465 SEC 702	VOL. II
PEACE CORPS	PL 87-293 SEC 24	VOL. I
LAOS		
AGREEMENT AND PROTOCOL ON (1973)	PL 93-189 SEC 34	VOL. I
LATIN AMERICA		
(SEE ALSO ALLIANCE FOR PROGRESS)		
(SEE ALSO IADB)		
(SEE ALSO RIO TREATY OF 1947)		
COMMUNIST INFLUENCE IN	PL 87-733	VOL. II
DEVELOPMENT		
(SEE ALLIANCE FOR PROGRESS)		
EDUCATION		
(SEE EDUCATION)		
FOREIGN DEBT		
REPORT TO CONGRESS	PL 99-83 SEC 719	VOL. I
IMMIGRATION	PL 86-735 SEC 4	VOL. I
OAS		
(SEE OAS)		
U.S. RELATIONS WITH		
FOREIGN AID	PL 86-735 SEC 1	VOL. I
LATIN AMERICAN AND CARIBBEAN DATA BASE		
ESTABLISHMENT OF	PL 100-204 SEC 110	VOL. II
LATIN AMERICAN DEVELOPMENT ACT	PL 86-735	VOL. I
LAVI AIRCRAFT		
FMS LOANS FOR	PL 99-83 SEC 101(C)	VOL. I
LDCS		
(SEE LESS DEVELOPED COUNTRIES)		
LEASING		
ARMS	PL 90-629 SEC 61	VOL. I
LEAST DEVELOPED COUNTRIES		
LOAN OBLIGATIONS	PL 100-461 SEC 572	VOL. I
LEBANON		
FOREIGN AID		
RESTRICTIONS ON	PL 100-461 SEC 532	VOL. I
UNITED NATIONS INTERIM FORCE IN		
PROTECTING ARCHEAOLOGICAL SITE AT TYRE	PL 100-204 SEC 708	VOL. II
LEBANON EMERGENCY ASSISTANCE ACT OF 1983	PL 98-43	VOL. I
LEBANON-U.S. RELATIONS	PL 94-329 SEC 410	VOL. I
AIR CARRIERS		
SUSPENSION OF FLIGHTS	50 FR 31835	407
ECONOMIC SUPPORT FUND	PL 98-43 SEC 2	VOL. I
FOREIGN AID	PL 100-461 SEC 559	VOL. I
MILITARY AID (U.S.)	PL 98-43 SEC 3	VOL. I
MULTINATIONAL FORCE		
AGREEMENT ON	LEBANON	VOL. II
U.S. PARTICIPATION	PL 98-119	VOL. II
REFUGEE AID	PL 98-164 SEC 111	VOL. II
RESOLUTION OF CRISIS	PL 97-113 SEC 715	VOL. I
U.S. ARMED FORCES IN	PL 98-43 SEC 4	VOL. I
U.S. POLICY TOWARD	PL 100-204 SEC 1232	VOL. II
LEGAL PROCESS		
RETIREMENT FUND		
FOREIGN SERVICE	PL 96-465 SEC 820	VOL. II
LEGATIONS		

			PAGE
LEGATIONS—CONTINUED			
(SEE FOREIGN SERVICE BUILDINGS ACT OF 1926)			
LEGISLATIVE REORGANIZATION ACTS (1946 & 1970)			
FOREIGN AFFAIRS OVERSIGHT—	PL 92-226	SEC 407	VOL. I
LENDING INSTITUTIONS			
(SEE MDBS)			
LESS DEVELOPED COUNTRIES			
(SEE ALSO AFRICA)			
(SEE ALSO LATIN AMERICA)			
AGRICULTURAL COMMODITY IMPORTS			
(SEE AGRICULTURAL COMMODITY SALES)			
AGRICULTURAL EXPORTS			
ASSISTANCE FROM U.S.—	PL 93-618	SEC 506	VOL. III
ARMS CONTROL			
LIMITING CONVENTIONAL WEAPONS	PL 99-83	SEC 129	VOL. I
ARMS SALES TO (U.S.)	PL 90-629	SEC 1	VOL. I
SOPHISTICATED WEAPONS—	PL 90-629	SEC 4	VOL. I
DUTY-FREE TREATMENT			
ELIGIBLE ARTICLES	PL 93-618	SEC 503	VOL. III
ELIGIBLE COUNTRIES	PL 93-618	SEC 502	VOL. III
TERMINATION OF	PL 93-618	SEC 504	VOL. III
ECONOMIC DEVELOPMENT			
FINANCIAL INSTITUTION AID	PL 95-118		VOL. III
TRADE			
(SEE ALSO TRADE)			
U.S. SURPLUS VESSELS	PL 97-360		VOL. I
LIABILITY INSURANCE			
FOREIGN MISSIONS REQUIRED	PL 95-393	SEC 6	VOL. II
LIBERIA			
FOREIGN AID			
NOTIFICATION REQUIREMENTS	PL 100-461	SEC 543	VOL. I
LIBERIA-U.S. RELATIONS			
FOREIGN AID			
CONDITIONS FOR	PL 99-83	SEC 807	VOL. I
CONDITIONS ON	PL 100-461	SEC 551	VOL. I
LIBRARY OF CONGRESS			
FOREIGN PROPAGANDA ON FILE—	PL 75-583	SEC 4	532
LIBYA-U.S. RELATIONS			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
BLOCKING OF PROPERTY AND INTERESTS	EO 12544		VOL. III
IMPORTS AND EXPORTS			
PROHIBITION ON	PL 99-83	SEC 504	VOL. I
PETROLEUM PRODUCTS			
IMPORT PROHIBITION	EO 12538		VOL. III
TERRORISM	PL 97-113	SEC 718	VOL. I
TRADE PROHIBITION	EO 12543		VOL. III
LINDELOF, JIM			
PRESIDENTIAL MEDAL OF FREEDOM	PL 100-463	SEC 8144	VOL. I
LITVINOV ASSIGNMENT	PL 81-455	SEC 301	471
LOBBYING			
PROHIBITING USE OF FUNDS FOR	PL 93-126	SEC 14	VOL. II
USIA GRANTEES			
PROHIBITED	PL 98-164	SEC 209	VOL. II
LOCUST			
AFRICA	PL 95-424	SEC 120	VOL. I
LODGE COMMISSION			
NEGOTIATIONS TO IMPLEMENT—	PL 92-226	SEC 410	VOL. I
UNITED NATIONS EXPENSES	PL 79-264	SEC 8 FN	VOL. II
LOGAN ACT	PL 80-772		542
LOYALTY			
(SEE ALSO NATIONALITY)			
ACDA PERSONNEL	PL 87-297	SEC 45	VOL. II
OATH OF ALLEGIANCE			
PASSPORTS	32 STAT 386		VOL. II
PEACE CORPS VOLUNTEERS	PL 87-293	SEC 5(J)	VOL. I
PEACE CORPS	PL 87-293	SEC 5(J)	VOL. I
SECURITY INVESTIGATIONS	PL 87-293	SEC 5(J)	VOL. I
USIA SPECIALISTS	PL 80-402	SEC 303	VOL. II
M			
MACCABEE PROGRAMING	PL 99-93	SEC 306	VOL. II
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976—	PL 94-265		3
MAILS (U.S.)			
FOREIGN PROPAGANDA	PL 75-583	SEC 4	532
	PL 75-583	SEC 8	535
MARIANA ISLANDS (NORTHERN)-U.S. RELATIONS	EO 12572		VOL. III

			PAGE
MARIHUANA			
ERADICATION OF	PL 87-195	SEC 481(D)	VOL. I
MARINE MAMMAL COMMISSION			
AUTHORIZATION OF			
APPROPRIATIONS	PL 92-522	NOTE	228
	PL 92-522	NOTE	228
MARINE MAMMAL PROTECTION ACT OF 1972	PL 92-522		214
AUTHORIZATION OF			
APPROPRIATIONS	PL 92-522	NOTE	228
MARINE MAMMALS			
(SEE ALSO ENDANGERED SPECIES, MARINE MAMMALS)			
CONSERVATION AND PROTECTION			
AUTHORIZATION OF			
APPROPRIATIONS	PL 92-522	NOTE	228
MARINE POLLUTION ACT	PL 96-478		84
MARINE RESOURCES, LIVING			
ANTARCTIC			
MANAGEMENT OF	PL 98-623	TITLE III	229
MARKET DEVELOPMENT COOPERATOR PROGRAM			
ESTABLISHMENT OF	PL 100-418	SEC 2303	VOL. III
MARPOL PROTOCOL			
IMPLEMENTATION OF	PL 96-478		84
MARSHALL ISLANDS-U.S. RELATIONS			
AGREEMENTS WITH	PL 99-239	SEC 103	VOL. III
CONDUCT OF FOREIGN AFFAIRS	PL 99-239	TITLE ONE	VOL. III
FOREIGN AID	PL 99-239	TITLE TWO	VOL. III
MILITARY AID	PL 99-239	TITLE THREE	VOL. III
MARXIST-LENINIST COUNTRIES			
AID PROHIBITION	PL 79-173	SEC 2(B)(2)	VOL. III
DEFINED	PL 79-173	SEC 2(B)(2)	VOL. III
MATERIALS AND MINERALS			
NATIONAL POLICY ON	PL 98-373	TITLE II	VOL. III
MATERIALS RESEARCH			
ADVANCED			
PROGRAM AND POLICY FOR	PL 98-373	TITLE II	VOL. III
MDBS			
(SEE ALSO RESPECTIVE INSTITUTIONS)			
(SEE ALSO RESPECTIVE ORGANIZATIONS)			
ADVERSE IMPACT ON U.S.			
AGRICULTURAL PRODUCTION	PL 95-118	SEC 1401-1403	VOL. III
AGRICULTURAL PRODUCTION AID	PL 95-118	SEC 901	VOL. III
DEBT-FOR-DEVELOPMENT SWAPS	PL 95-118	SEC 1608	VOL. III
DEVELOPMENT AID	PL 87-195	SEC 209	VOL. I
ENERGY, RENEWABLE	PL 96-259	SEC 601-602	VOL. III
ENVIRONMENTAL CONCERNS			
PROMOTING U.S.			
POLICIES	PL 100-461	SEC 535	VOL. I
EXPORT OPPORTUNITIES FOR U.S.	PL 96-259	SEC 401	VOL. III
EXPORTING U.S. GOODS AND SERVICES			
PROMOTING			
OPPORTUNITIES FOR	PL 100-418	SEC 3202	VOL. III
FOREIGN DIRECT INVESTMENT			
REPORT TO CONGRESS	PL 98-181	SEC 1005	VOL. III
HUMAN RIGHTS	PL 95-118	SEC 705	VOL. III
ENHANCEMENT OF	PL 95-118	SEC 701	VOL. III
HUMAN WELFARE AND ENVIRONMENTAL CONSERVATION			
DEBT-FOR-DEVELOPMENT			
SWAPS	PL 95-118	SEC 1608	VOL. III
ILLICIT DRUG PRODUCTION			
PROGRAMS TO REDUCE			
ECONOMIC DEPENDENCE	PL 95-118	SEC 1606	VOL. III
INSTITUTIONAL REFORMS	PL 95-118	SEC 1501	VOL. III
NGOS			
INCREASING			
COLLABORATION	PL 95-118	SEC 1602	VOL. III
OPPOSITION TO ASSISTANCE FOR FOREIGN SURPLUS			
COMMODITIES AND MINERALS	PL 99-472	SEC 22	VOL. III
PERSONNEL PRACTICES			
POLITICIZATION OF	PL 98-181	SEC 1006	VOL. III
POLICIES, PROJECTS, AND LOANS			
ENVIRONMENTAL			
CONSIDERATIONS	PL 95-118	SEC 1301-1307	VOL. III
POLICY IMPACT ON HUMAN			
WELFARE	PL 95-118	SEC 1601	VOL. III
TARGETING ASSISTANCE TO THE NEEDY	PL 95-118	SEC 1101	VOL. III
TECHNOLOGY (LIGHT CAPITAL)			
PROMOTION OF	PL 95-118	SEC 801	VOL. III
U.S. CONTRIBUTIONS TO	PL 100-461	TITLE I	VOL. I

		PAGE
MDBS--CONTINUED		
U.S. NEGOTIATIONS WITH CONGRESSIONAL CONSULTATION	PL 95-118 SEC 1201	VOL. III
U.S. PARTICIPATION	PL 95-118	VOL. III
MEDIATION (SEE ALSO ARBITRATION)		
MEDICAL SERVICES		
STATE DEPARTMENT MALPRACTICE SUITS	PL 84-885 SEC 30	VOL. II
MEDITERRANEAN (EASTERN)-U.S. RELATIONS		
MILITARY BALANCE	PL 100-461 SEC 569	VOL. I
MERCHANT MARINE (U.S.) (SEE ALSO FISHERIES, SEIZURE OF U.S. VESSELS) (SEE ALSO POLLUTION, OIL)		
DEFENSE ARTICLES SHIPPED BY	PL 87-195 SEC 603	VOL. I
DIFFERENTIAL IN RATES		
FOREIGN AID	PL 87-195 SEC 640C	VOL. I
FRESH FRUIT SHIPPED BY	PL 87-195 SEC 603	VOL. I
TRANSPORTING AGRICULTURAL COMMODITY EXPORTS	PL 99-198 SEC 1141	VOL. I
MERCHANT MARINE ACT OF 1936, AS AMENDED	49 STAT 1985	VOL. I
MERESMAN CASE		
CODIFICATION OF	PL 96-465 SEC 2103(F)	VOL. II
MEXICO-U.S. RELATIONS		
DEEPWATER PORTS	PL 93-627 SEC 22	104
ECONOMIC DEVELOPMENT	PL 99-603 SEC 601	VOL. II
EX-IM BANK SPECIAL FACILITY	PL 79-173 SEC 13	VOL. III
FACILITATING INTERNATIONAL TRADE	PL 99-83 SEC 717	VOL. I
INTERNATIONAL WATER AND BOUNDARY COMMISSION	PL 100-459 TITLE III	VOL. II
INTERPARLIAMENTARY GROUP	PL 86-420	443
PRISONERS IN MEXICO	PL 94-329 SEC 408	VOL. I
RIO GRANDE POLLUTION CONTROL	PL 100-465	388
TRADE AGREEMENTS	PL 100-418 SEC 2101	VOL. III
TRAVEL ADVISORIES	PL 99-93 SEC 134	VOL. II
WATER AND BOUNDARY COMMISSION	PL 95-105 SEC 514	VOL. II
MIAS		
(SEE ALSO INDOCHINA WAR)		
ACCOUNTING OF	PL 95-88 SEC 132(8)	VOL. I
	PL 98-525 SEC 1525	VOL. I
LAOTIAN AGREEMENT AND PROTOCOL	PL 93-189 SEC 34	VOL. I
MICRONESIA, FEDERATED STATES OF- U.S. RELATIONS		
MILITARY AID	PL 99-239 TITLE THREE	VOL. III
MICRONESIA, FEDERATED STATES OF-U.S. RELATIONS		
AGREEMENTS WITH	PL 99-239 SEC 102	VOL. III
MICRONESIAN CLAIMS ACT OF 1971 (SEE ALSO FOREIGN CLAIMS)	PL 92-39	501
MIDDLE EAST (SEE ALSO ISRAEL-U.S. RELATIONS)		
AID TO EGYPT AND ISRAEL		
INTERNATIONAL EFFORTS	PL 94-161 SEC 322	VOL. I
COMMUNIST AGGRESSION IN	PL 85-7 SEC 2	VOL. II
ECONOMIC SUPPORT FUND	PL 99-83 SEC 202	VOL. I
EGYPTIAN-ISRAELI AGREEMENT, 1975	PL 94-110	VOL. II
PEACE EFFORTS	PL 95-384 SEC 28	VOL. I
MILITARY AID IN SUPPORT OF	PL 96-35 SEC 2	VOL. I
SOVIET UNION PARTICIPATION IN	PL 100-204 SEC 1231	VOL. II
SCIENCE AND TECHNOLOGY COOPERATIVE	PL 99-83 SEC 202	VOL. I
SENSE OF CONGRESS	PL 99-83 SEC 202	VOL. I
TERRORISM		
PERCENTAGE OF TOTAL IN 1985	PL 100-204 TITLE X	VOL. II
U.N. PEACEKEEPING		
U.S. CONTRIBUTION TO	PL 94-37	VOL. II
U.N. RELATIONS WITH	PL 85-7 SEC 4,6	VOL. II
U.S. RELATIONS WITH		
ARMS SHIPMENTS TO	PL 91-672 SEC 5	VOL. I
EARLY-WARNING SYSTEM IN SINAI	PL 94-110	VOL. II
ECONOMIC AID	PL 85-7 SEC 1	VOL. II
MILITARY AID	PL 93-199	VOL. I
	PL 85-7 SEC 3	VOL. II
PERSONNEL ASSIGNED TO SINAI	PL 94-110 SEC 1	VOL. II
REPORTS TO CONGRESS	PL 94-110 SEC 4	VOL. II

			PAGE
MIGRANTS			
(SEE IMMIGRATION, FOREIGN)			
(SEE REFUGEES)			
MIGRATION AND REFUGEE ASSISTANCE ACT OF 1962	PL 87-510		VOL. II
(SEE ALSO REFUGEE RELIEF)			
MILITARY (FOREIGN)			
CIVIC ACTION	PL 87-195	SEC 502	VOL. I
SERVICES FROM U.S.			
PROHIBITED	PL 80-402	SEC 301	VOL. II
U.S. CITIZENS ENLISTING IN	18 USC 959		552
MILITARY (U.S.)			
(SEE ALSO INDOCHINA WAR)			
(SEE ALSO MUTUAL DEFENSE)			
AIRLIFT AGREEMENTS WITH ALLIES	10 USC 2213		VOL. I
BALLISTIC MISSILE DEFENSE			
REPORT TO CONGRESS	PL 99-145	SEC 226	VOL. I
COMBAT DUTY IN NICARAGUA			
SENSE OF CONGRESS	PL 99-145	SEC 1451	VOL. I
COMMISSARIES AND EXCHANGES			
TOSHIBA PRODUCTS BAN	PL 100-463	SEC 8091	VOL. I
CULEBRA TRAINING OPERATIONS	PL 93-365	SEC 704	VOL. I
ENGAGED IN HOSTILITIES ABROAD			
EXPEDITED PROCEDURES IN CONGRESS	PL 98-164	SEC 1013	VOL. II
INSTALLATIONS ABROAD			
SECURITY AGAINST			
TERRORIST ACTIONS	PL 99-399	SEC 1101	VOL. II
LEBANON FORCE	PL 98-43	SEC 4	VOL. I
PERSIAN GULF FORCES			
COMMENDATION OF	PL 100-180	SEC 1401	VOL. I
REPORTS TO CONGRESS	PL 93-365	SEC 302	VOL. I
SPECIAL OPERATIONS FORCES	PL 99-145	SEC 1453	VOL. I
STATIONED ABROAD			
EUROPE	PL 100-180	SEC 1002	VOL. I
	PL 93-365	SEC 302	VOL. I
EUROPE LIMITATION	PL 98-94	SEC 1103	VOL. I
U.N. RELATIONS WITH	PL 93-148	SEC 8	VOL. II
USE OF	S RES 91-85		VOL. II
MILITARY ACTIVITIES			
CONFIDENCE-BUILDING MEASURES	PL 100-456	SEC 901	VOL. II
U.S. CITIZENS			
AGAINST U.S. ALLIES	18 USC 960		553
ARMING VESSELS	18 USC 962		553
ENLISTING IN A FOREIGN SERVICE	18 USC 959		552
MILITARY AID (U.S.)			
(SEE ALSO ARMS SALES)			
(SEE ALSO ECONOMIC SUPPORT FUND)			
(SEE ALSO MUTUAL DEFENSE)			
ALLOCATION CHANGES	PL 87-195	SEC 653	VOL. I
APPPROPRIATIONS, 1989	PL 100-461	TITLE III	VOL. I
CONSOLIDATION OF ACCOUNTS	PL 87-195	SEC 610	VOL. I
COUNTERPART FUNDS	PL 93-189	SEC 40	VOL. I
DEFENSE ARTICLES			
AUTHORIZATION OF APPROPRIATIONS	PL 87-195	SEC 504	VOL. I
LOANS OF	PL 87-195	SEC 503-504	VOL. I
PROCUREMENT	PL 87-195	SEC 605	VOL. I
PROHIBITION AGAINST FINANCING	PL 90-390	SEC 5	VOL. III
TRANSFER OF	PL 87-195	SEC 502-502A	VOL. I
DISCRIMINATION IN PROVIDING ASSISTANCE	PL 87-195	SEC 505(G)	VOL. I
EASTERN MEDITERRANEAN	PL 87-195	SEC 620C	VOL. I
EDUCATION AND TRAINING	PL 87-195	SEC 541-543	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE III	VOL. I
MARITIME SKILLS	PL 87-195	SEC 545	VOL. I
EDUCATION AND TRAINING PROGRAMS			
EXCHANGE STUDENTS	PL 87-195	SEC 544	VOL. I
ELIGIBILITY			
CONDITIONS OF	PL 87-195	SEC 505	VOL. I
EMERGENCY AUTHORITY	PL 87-195	SEC 506	VOL. I
EXCHANGED FOR STRATEGIC RAW MATERIALS	PL 87-195	SEC 663	VOL. I
FOREIGN MILITARY REFINANCING PROGRAM			
COUNTRIES IN DEFAULT	PL 100-461	TITLE III	VOL. I
INTEREST RATE REDUCTION	PL 100-461	TITLE III	VOL. I
U.S. GUARANTIES	PL 100-461	TITLE III	VOL. I
FOREIGN MILITARY SALES			
INTEREST RATE REDUCTION	PL 100-202	TITLE III	VOL. I

			PAGE
MILITARY AID (U.S.)--CONTINUED			
FOREIGN MILTARY FINANCE PROGRAM			
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
FOREIGN MILTARY SALES			
REFINANCING----------	PL 100-202	TITLE III	VOL. I
GREECE			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
GUARANTY RESERVE FUND------	PL 100-461	TITLE III	VOL. I
GUATEMALA			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
HAITI			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
IMET			
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
ISRAEL----------	PL 93-199		VOL. I
KENYA			
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
MIDDLE EAST----------	PL 85-7	SEC 3	VOL. II
PEACE TREATY SUPPORT--	PL 96-35	SEC 2	VOL. I
MILITARY ASSISTANCE ADVISORY GROUPS			
RESTRICTIONS---------	PL 87-195	SEC 515	VOL. I
MILITARY ASSISTANCE PROGRAM			
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
MILITARY PERSONNEL ASSIGNED ABROAD			
RESTRICTIONS---------	PL 87-195	SEC 515	VOL. I
MOROCCO			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
NATO			
SOUTHERN FLANK-------	PL 87-195	SEC 516	VOL. I
NICARAGUA			
CONDITIONS FOR-------	PL 98-473	SEC 8066	VOL. I
PHILIPPINES			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
POLICY----------	PL 87-195	SEC 501	VOL. I
PROGRAMING AND BUDGETING---	PL 87-195	SEC 501	VOL. I
REFINANCING PROGRAM			
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
EGYPT----------	PL 100-461	TITLE III	VOL. I
GREECE----------	PL 100-461	TITLE III	VOL. I
ISRAEL----------	PL 100-461	TITLE III	VOL. I
MOROCCO----------	PL 100-461	TITLE III	VOL. I
PAKISTAN----------	PL 100-461	TITLE III	VOL. I
TUNISIA----------	PL 100-461	TITLE III	VOL. I
TURKEY----------	PL 100-461	TITLE III	VOL. I
SOAF			
LIMITATION, 1989------	PL 100-461	TITLE III	VOL. I
SECRETARY OF DEFENSE------	PL 87-195	SEC 623	VOL. I
STOCK-PILING FOR FOREIGN COUNTRIES----------	PL 87-195	SEC 514	VOL. I
TERMINATION OF----------	PL 87-195	SEC 505	VOL. I
TUNISIA			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
	PL 87-195	SEC 620(X)	VOL. I
TURKEY----------			
APPROPRIATIONS, 1988--	PL 100-202	TITLE III	VOL. I
APPROPRIATIONS, 1989--	PL 100-461	TITLE III	VOL. I
MILITARY BASES ABROAD (SEE MILITARY (U.S.), STATIONED ABROAD)			
MILITARY CONSTRUCTION AUTHORIZATION ACT, 1986------	PL 99-167		VOL. I
MILITARY EQUIPMENT (U.S.)			
ANTI-BALLISTIC MISSILES			
DEPLOYMENT OF-------	PL 100-180	SEC 225	VOL. I
DEVELOPMENT AND TESTING----------	PL 100-180	SEC 225	VOL. I
M-X MISSILE PROGRAM			
MODERNIZATION OF----	PL 100-180	SEC 220	VOL. I
MIDGETMAN MISSILE PROGRAM			
MODERNIZATION OF----	PL 100-180	SEC 220	VOL. I
M1 OR M1A1 ABRAMS TANK			
CO-PRODUCTION OF-----	PL 100-180	SEC 1023	VOL. I
TRANSFER TO CERTAIN NATIONS			
RESTRICTIONS ON------	PL 100-456	SEC 1307	VOL. I
TRANSFER TO SAUDI ARABIA---	PL 100-456	SEC 1306	VOL. I
MILITARY PROCUREMENT (U.S.)			
CUBAN OR SOVIET UNION			
PRODUCED NICKEL PRODUCTS CONTAINING---	PL 98-525	SEC 1544	VOL. I
IMPORTED MATERIALS			
IMPACT ON U.S. INDUSTRIAL BASE-----	PL 98-525	SEC 1522	VOL. I
IMPORTING MATERIALS-------	PL 96-175	SEC 2	VOL. III

			PAGE
MILITARY SALES (SEE ARMS SALES)			
MINERALS			
DEEP SEABED	PL 96-283		47
ENFORCEMENT OF REGULATIONS	PL 96-283	TITLE III	73
REGULATIONS FOR U.S.	PL 96-283	TITLE I	51
REVENUE SHARING TRUST FUND	PL 96-283	SEC 403	81
TAX FOR REMOVAL OF	PL 96-283	TITLE IV	79
FOREIGN SURPLUS			
U.S. OPPOSITION TO ASSISTANCE	PL 99-472	SEC 22	VOL. III
MINORITIES			
ECONOMIC SUPPORT FUND MINORITY SET ASIDE	PL 99-83	SEC 315	VOL. I
MINORITY RESOURCE CENTER	PL 95-88	SEC 133(C)	VOL. I
MISSILE TECHNOLOGY CONTROL REGIME	PL 100-180	SEC 901	VOL. II
MANPOWER REQUIREMENTS REPORT TO CONGRESS	PL 100-180	SEC 901	VOL. II
MISSING-IN-ACTION			
(SEE INDOCHINA WAR, MIAS)			
MOHANDAS K. GANDHI RECOGNITION DAY	PL 100-468		632
MONROE DOCTRINE			
U.S. POLICY TOWARD CUBA	PL 87-733		VOL. II
MOST-FAVORED-NATION PRINCIPLE			
TRADE EXPANSION ACT OF 1962	PL 87-794	SEC 251	VOL. III
MOST-FAVORED-NATION TREATMENT			
DEFINED	PL 93-618	SEC 601	VOL. III
EAST-WEST TRADE	PL 93-618	SEC 402-411	VOL. III
NONMARKET ECONOMY COUNTRIES	PL 93-618	SEC 402-411	VOL. III
MOUNT ALTO			
SOVIET EMBASSY SITE			
ELECTRONIC ESPIONAGE CAPABILITY	PL 100-178	SEC 901	VOL. II
	PL 100-180	SEC 1122	VOL. II
PROHIBITION ON USE OF- WITHDRAWAL FROM	PL 100-204	TITLE I	VOL. II
EMBASSY AGREEMENT	PL 100-204	TITLE I	VOL. II
MOZAMBIQUE			
FOREIGN AID RESTRICTIONS ON	PL 100-461	SEC 571	VOL. I
MOZAMBIQUE-U.S. RELATIONS			
FOREIGN AID CONDITIONS FOR	PL 99-83	SEC 813	VOL. I
MULTILATERAL DEVELOPMENT BANK PROCUREMENT ACT OF 1988	PL 100-418	SEC 3201	VOL. III
MULTILATERAL EXPORT CONTROL ENHANCEMENT AMENDMENTS ACT	PL 100-418	SEC 2441	VOL. III
MULTILATERAL INVESTMENT GUARANTEE AGENCY	HR 3570	SEC 401-414	VOL. III
CAPITAL STOCK SUBSCRIPTION	HR 3570	SEC 411	VOL. III
MULTILATERAL ORGANIZATIONS			
(SEE INTERNATIONAL ORGANIZATIONS)			
MULTINATIONAL CORPORATIONS			
OPIC GUARANTEES	PL 87-195	SEC 234	VOL. I
MULTINATIONAL FORCE AND OBSERVERS			
REPORTS TO CONGRESS			
REQUIREMENT DELEGATED	EO 12361		VOL. II
U.S. CONTRIBUTION TO	PL 97-132	SEC 4	VOL. II
U.S. PARTICIPATION IN	PL 97-132	SEC 3	VOL. II
CONGRESSIONAL INTENT	PL 97-132	SEC 7	VOL. II
REPORTS TO CONGRESS	PL 97-132	SEC 6	VOL. II
MULTINATIONAL FORCE AND OBSERVERS PARTICIPATION RESOLUTION	PL 97-132		VOL. II
MULTINATIONAL FORCE IN LEBANON			
U.S. PARTICIPATION			
AGREEMENT ON	LEBANON		VOL. II
CONGRESSIONAL AUTHORIZATION	PL 98-119		VOL. II
MULTINATIONAL FORCE IN LEBANON RESOLUTION	PL 98-119		VOL. II
MUTUAL DEFENSE			
ARMS SALES	PL 90-629	SEC 4	VOL. I
FOREIGN AGENTS REGISTRATION	PL 75-583	SEC 3	531
FOREIGN AID EFFECT ON	PL 87-195	SEC 650	VOL. I
MUTUAL DEFENSE ALLIANCES			
BURDEN SHARING SENSE OF CONGRESS	PL 100-204	SEC 1254	VOL. II
MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961	PL 87-256		VOL. II
(SEE ALSO EDUCATIONAL AND CULTURAL EXCHANGE)			
AUTHORIZATION OF APPROPRIATIONS	PL 87-256	SEC 105	VOL. II
MUTUAL SECURITY ACT OF 1954	PL 83-665		VOL. I

		PAGE
MUTUAL SECURITY ACT OF 1954--CONTINUED		
AID TO MIDDLE EAST	PL 85-7 SEC 3	VOL. II
MUTUAL SECURITY ACT OF 1959	PL 86-108	VOL. I
MX MISSILE		
ADDITIONAL ACQUISITIONS POLICY ON	PL 98-525 SEC 110	VOL. I
N		
NAIROBI PROTOCOL		
IMPLEMENTATION OF	PL 100-418 SEC 1121	VOL. III
NARCOTICS		
(SEE DRUG CONTROL)		
NARCOTICS CONTROL TRADE ACT	PL 93-618 SEC 801	VOL. III
NATIONAL ACADEMY OF PEACE AND CONFLICT RESOLUTION	PL 95-561	VOL. II
NATIONAL ADVISORY COMMISSION ON AGRICULTURAL EXPORT TRANSPORT POLICY		
DUTIES	49 STAT 1985 SEC 901H	VOL. I
ESTABLISHING	49 STAT 1985 SEC 901G	VOL. I
NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES		
ESTABLISHED	EO 11269	VOL. III
NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS	PL 79-171 SEC 4	VOL. III
	PL 84-350 SEC 4	VOL. III
	PL 86-565 SEC 4	VOL. III
IDA	PL 86-147 SEC 12	VOL. III
REPORTS	PL 79-171 SEC 15	VOL. III
REPORTS TO CONGRESS		
NATIONAL AERONAUTICS AND SPACE ACT OF 1958	PL 85-568	409
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT OF 1988	PL 100-147	412
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, FISCAL YEAR 1989	PL 100-685	413
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1976	PL 94-39	410
NATIONAL COMMISSION ON EDUCATIONAL, SCIENTIFIC, AND CULTURAL COOPERATION		
AUTHORIZATION	PL 99-93 SEC 105	VOL. II
NATIONAL COMMITMENTS		
DEFINED	S RES 91-85	VOL. II
FOREIGN AID	PL 87-195 SEC 650	VOL. I
NATIONAL CRITICAL MATERIALS ACT OF 1984	PL 98-373 TITLE II	VOL. III
NATIONAL CRITICAL MATERIALS COUNCIL	PL 98-373 TITLE II	VOL. III
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989	PL 100-180	VOL. I
NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1989	PL 100-456	VOL. I
NATIONAL EMERGENCIES ACT	PL 94-412	VOL. II
NATIONAL EMERGENCY		573
COMMUNICATIONS PREPAREDNESS	EO 12472	
DECLARATION OF	PL 94-412 SEC 201	VOL. II
EXECUTIVE-CONGRESSIONAL CONSULTATION	PL 95-223 SEC 204	VOL. III
PRESIDENTIAL AUTHORITY	PL 95-223 SEC 203	VOL. III
TERMINATION	PL 94-412 SEC 101	VOL. II
TRADING WITH THE ENEMY	PL 95-223 SEC 101	VOL. III
TRAVEL CONTROLS	66 STAT 190	VOL. II
NATIONAL ENDOWMENT FOR DEMOCRACY		
AUTHORIZATION OF GRANTS TO	PL 98-164 SEC 503	VOL. II
AUTHORIZATION, 1984-85	PL 98-164 SEC 205	VOL. II
ELIGIBILITY FOR GRANTS	PL 98-164 SEC 504	VOL. II
GRANT FROM USIA	PL 100-204 SEC 210	VOL. II
GRANTS TO	PL 100-459 TITLE V	VOL. II
GRANTS TO PROMOTE DEMOCRACY IN SOUTH AFRICA	PL 99-93 SEC 211(B)	VOL. II
NATIONAL ENDOWMENT FOR DEMOCRACY ACT	PL 98-164 SEC 501	VOL. II
NATIONAL FORMER PRISONERS OF WAR RECOGNITION DAY - PROCLAMATION	PL 100-269	618
NATIONAL POW/MIA RECOGNITION DAY	PL 100-431	631
NATIONAL SCIENCE FOUNDATION ACT OF 1950	PL 81-507	408
NATIONAL SECURITY		
(SEE ALSO NATIONAL SECURITY COUNCIL)		

			PAGE
NATIONAL SECURITY--CONTINUED			
EMERGENCY COMMUNICATIONS			
PREPARDNESS	EO 12472		573
EMERGENCY PREPAREDNESS			
GENERAL PROVISIONS	EO 12656	PART 2	557
MANAGEMENT OF	EO 12656	SEC 104	556
POLICY	EO 12656	SEC 101	557
EXCHANGE-OF-PERSONS			
ACTIVITIES	PL 97-241	SEC 305	VOL. II
GLOBAL PROBLEMS AFFECTING	PL 97-113	SEC 710	VOL. I
IMPORTS THAT THREATEN	PL 100-418	SEC 1501	VOL. III
INTERNATIONAL AGREEMENTS			
TRANSMITTED	PL 92-403		VOL. II
PROTECTION OF			
EXPORT CONTROLS REVIEW	PL 100-418	SEC 2433	VOL. III
REPORT TO CONGRESS	PL 80-253	SEC 104	609
TRADE CONCESSIONS	PL 87-794	SEC 232	VOL. III
NATIONAL SECURITY ACT OF 1947	PL 80-253		607
NATIONAL SECURITY COUNCIL			
ESTABLISHMENT OF	PL 80-253	SEC 101	607
PURPOSE OF	EO 12333	SEC 1.2	VOL. II
NATIONAL SECURITY EMERGENCY PREPAREDNESS RESPONSIBILITIES	EO 12656		555
NATIONAL SIR WINSTON CHURCHILL RECOGNITION WEEK	PL 100-663		640
NATIONAL TRADE DATA BANK			
EXPORT PROMOTION DATA SYSTEM	PL 100-418	SEC 5406(C)	VOL. III
INTERNATIONAL ECONOMIC DATA SYSTEM	PL 100-418	SEC 5406(B)	VOL. III
REPORT TO CONGRESS	PL 100-418	SEC 5413(B)	VOL. III
NATIONAL YEAR OF FRIENDSHIP WITH FINLAND	PL 99-602		616
NATIONAL YEAR OF THE AMERICAS - PROCLAMATION	PL 99-356		550
NATIONALITY			
(SEE ALSO REFUGEES)			
CRIMINALITY			
STATUTE OF LIMITATIONS	65 STAT 107	SEC 3291	VOL. II
NATIONALIZATION OF U.S. PROPERTY			
CUBA			
FOREIGN AID CUT-OFF	PL 87-195	SEC 620(A)	VOL. I
DUTY-FREE TREATMENT DENIED	PL 93-618	SEC 502(B)(4)	VOL. III
EFFECT ON ADB LOANS	PL 89-369	SEC 18	VOL. III
EFFECT ON IADB LOANS	PL 86-147	SEC 21	VOL. III
EFFECT ON IDA LOANS	PL 86-565	SEC 12	VOL. III
FOREIGN AID CUT-OFF	PL 87-195	SEC 620(E)(1)	VOL. I
FOREIGN CLAIMS	PL 81-455	SEC 4	452
HICKENLOOPER AMENDMENT	PL 87-195	SEC 620(E)(1)	VOL. I
NATIONALIZATIONS			
(SEE ALSO FOREIGN CLAIMS)			
OPIC INSURANCE AGAINST	PL 87-195	SEC 234(A)	VOL. I
U.S. POLICY	PL 87-195	SEC 601	VOL. I
NATIONALS (U.S.)			
DEFINED	PL 81-455	SEC 502	486
NATO			
ACQUISITION AGREEMENTS WITH U.S.	PL 96-323	SEC 2	VOL. II
ACQUISITION OF DEFENSE EQUIPMENT	10 USC 2407		VOL. I
AIRLIFT AGREEMENTS WITH	10 USC 2213		VOL. I
ARMAMENTS COOPERATION WITH MEMBER COUNTRIES			
REPORT TO CONGRESS	PL 98-525	SEC 1006	VOL. I
COMMUNICATIONS SUPPORT ARRANGEMENT	10 USC 2401A		VOL. I
CONTRIBUTIONS BY ALLIES			
REPORT TO CONGRESS	PL 98-525	SEC 1003	VOL. I
CONTRIBUTIONS FROM ALLIES			
REPORT TO CONGRESS	PL 98-94	SEC 1102	VOL. I
CONVENTIONAL FORCES			
IMPROVEMENT OF	PL 98-525	SEC 1002	VOL. I
	PL 98-94	SEC 1104	VOL. I
COOPERATIVE LOGISTIC SUPPORT AGREEMENTS	PL 99-661	SEC 1102	VOL. I
COOPERATIVE PROGRAMS	PL 98-94	SEC 1101	VOL. I
AUTHORIZATION OF APPROPRIATIONS, 1985	PL 98-525	SEC 105	VOL. I
AUTHORIZATION OF APPROPRIATIONS, 1986	PL 99-145	SEC 106	VOL. I
LIMITATION ON OBLIGATIONS	PL 98-525	SEC 105	VOL. I
COOPERATIVE PROGRAMS IN RESEARCH AND DEVELOPMENT	PL 99-145	SEC 1103	VOL. I
COOPERATIVE RESEARCH AND DEVELOPMENT PROGRAMS			
LENDING MATERIALS, SUPPLIES, AND EQUIPMENT	PL 90-629	SEC 65	VOL. I

		PAGE
NATO--CONTINUED		
CROSS-SERVICING AGREEMENTS WITH U.S.	PL 96-323 SEC 2	VOL. II
DEFENSE INDUSTRIAL COOPERATION	PL 97-252 SEC 1122	VOL. I
DETERRENCE REQUIREMENTS REPORT TO CONGRESS	PL 100-180 SEC 1001	VOL. I
EUROPEAN AIR DEFENSE AGREEMENTS AUTHORITY OF SECRETARY OF DEFENSE	PL 98-525 SEC 1007	VOL. I
FUTURE OF STUDY BY NORTH ATLANTIC ASSEMBLY	PL 100-180 SEC 1003	VOL. I
INCREASED DEFENSE SPENDING BY ALLIES	PL 98-525 SEC 1001	VOL. I
NORTH ATLANTIC ASSEMBLY	PL 84-689	445
NUCLEAR POSTURE REPORT TO CONGRESS	PL 98-94 SEC 1105	VOL. I
NUCLEAR WEAPONS MODERNIZATION	PL 100-456 SEC 1004	VOL. I
READINESS REPORT TO CONGRESS	10 USC 117	VOL. I
REPORTS TO CONGRESS	PL 98-94 SEC 1101	VOL. I
RESEARCH AND DEVELOPMENT COOPERATIVE PROGRAMS	PL 99-145 SEC 1103	VOL. I
SEASPARROW COOPERATIVE PROGRAM	PL 98-525 SEC 1004	VOL. I
SOUTHERN FLANK U. S. MILITARY AID	PL 87-195 SEC 516	VOL. I
STANDARDIZATION OF EQUIPMENT	10 USC 2457	VOL. I
U.S. COMMITMENT	PL 95-287	VOL. II
U.S. MEMBERSHIP IN	PL 83-665 SEC 408	VOL. I
U.S. MILITARY IN EUROPE COMBAT-TO-SUPPORT RATIO	PL 98-94 SEC 1106	VOL. I
LIMITATION ON	PL 98-94 SEC 1103	VOL. I
U.S. SUPPORT FORCES IN EUROPE SENSE OF CONGRESS	PL 100-180 SEC 1002	VOL. I
NATURAL GAS INTERNATIONAL AGREEMENTS ON	PL 98-164 SEC 1009	VOL. II
NATURAL RESOURCES LESS DEVELOPED COUNTRIES FOREIGN AID	PL 87-195 SEC 118	VOL. I
NAVAL VESSELS COAST GUARD DRUG-INTERDICTION ASSISTANCE	PL 99-145 SEC 1421	VOL. I
DISPOSAL OF	PL 84-1028 SEC 7307	VOL. I
DRUG- INTERDICTION AREAS ASSIGNING COAST GUARD PERSONNEL	PL 99-145 SEC 1421	VOL. I
NEUTRALITY ACT OF 1939	PR 76-54	545
NEWS MEDIA FOREIGN JOURNALISTS IN U.S.	PL 75-583 SEC 1	523
NICARAGUA IMF ASSISTANCE TO PRIVATE SECTOR	PL 79-171 SEC 38	VOL. III
OVERTHROWING GOVERNMENT OF PROHIBITED	PL 97-377 SEC 793	VOL. I
TRADE PROHIBITION ON	EO 12513	VOL. I
U.S. POLICY TOWARD	PL 99-591 SEC 203	VOL. I
NICARAGUA-U.S. RELATIONS USE OF U.S. ARMED FORCES SENSE OF CONGRESS	PL 100-180 SEC 1405	VOL. I
CONFLICT RESOLUTION	PL 99-83 SEC 722(C)	VOL. I
CONGRESSIONAL FINDINGS AND POLICY	PL 99-83 SEC 722	VOL. I
CONTADORA AGREEMENT AID IN IMPLEMENTING	PL 99-83 SEC 722(H)	VOL. I
COVERT AID	PL 98-215 SEC 108	VOL. I
COVERT AID, 1984	PL 98-212 SEC 775	VOL. I
FOREIGN AID DISASTER RELIEF	PL 87-195 SEC 494	VOL. I
FOREIGN AID USED AGAINST GOVERNMENT LIMITATIONS ON	PL 99-83 SEC 722(E)	VOL. I
MILITARY AID CONDITIONS FOR	PL 98-473 SEC 8066	VOL. I
PROHIBITED	PL 96-533 SEC 119	VOL. I
MILITARY OR PARAMILITARY ACTIVITIES (U.S.) PROHIBITING	PL 99-83 SEC 722(D)	VOL. I
RESTRICTIONS ON	PL 100-178 SEC 104	VOL. I
MINING OF PORTS SENSE OF CONGRESS	PL 98-369 SEC 2907	VOL. I

			PAGE
NICARAGUA-U.S. RELATIONS--CONTINUED			
NICARAGUAN FOREIGN AND DOMESTIC POLICIES	PL 99-83	SEC 722(B)	VOL. I
REPORTS TO CONGRESS	PL 99-83	SEC 722(J)	VOL. I
TRADE EMBARGO PARTIAL LIFTING OF	PL 100-204	SEC 1212	VOL. II
U.S. AID	PL 97-113	SEC 724	VOL. I
U.S. POLICIES TOWARD	PL 99-83	SEC 722(I)	VOL. I
USE OF U.S. ARMED FORCES SENSE OF CONGRESS	PL 100-456	SEC 1304	VOL. I
NICARAGUAN DEMOCRATIC RESISTANCE			
ADDITIONAL ASSISTANCE	PL 100-276		VOL. I
APPLICATION OF EXISTING LAWS	PL 99-591	SEC 209	VOL. I
APPROPRIATIONS, 1986 RESTRICTIONS ON	PL 99-190	SEC 8050	VOL. I
APPROPRIATIONS, 1988 RESTRICTIONS ON	PL 100-202	SEC 8144	VOL. I
ASSISTANCE TO	PL 100-202	SEC 111	VOL. I
COORDINATION OF AND ACCOUNTABILITY FOR	PL 99-591	SEC 207	VOL. I
DELEGATION OF AUTHORITY TO IMPLEMENT	EO 12570		VOL. I
HUMANITARIAN ASSISTANCE	PL 99-591	SEC 208	VOL. I
GENERAL PROVISIONS	PL 99-88	SEC 101-104	VOL. I
REPORT TO CONGRESS	PL 99-88	SEC 104	VOL. I
INCENTIVES FOR A NEGOTIATED SETTLEMENT	PL 99-591	SEC 211	VOL. I
LIMITATION ON SOURCE OF FUNDS FOR	PL 99-661	SEC 1351	VOL. I
MILITARY OR PARAMILITARY ACTIVITIES (U.S.) RESTRICTIONS ON	PL 99-591	SEC 9045	VOL. I
U.S. ASSISTANCE	PL 99-591	SEC 206	VOL. I
U.S. GOVERNMENT PERSONNEL PARTICIPATION LIMITATIONS	PL 99-591	SEC 216	VOL. I
U.S. POLICY TOWARD	PL 99-591	SEC 204	VOL. I
YATAMA INDIANS APPROPRIATIONS, 1989	PL 100-276		VOL. I
NICARAGUAN HUMANITARIAN ASSISTANCE OFFICE ESTABLISHMENT OF	EO 12530		VOL. I
NICARAGUAN RESISTANCE ASSISTANCE TO EXPEDITING PROCEDURES	PL 100-463	SEC 9002	VOL. I
REPORT TO CONGRESS	PL 100-463	SEC 9004	VOL. I
RESTRICTIONS ON	PL 100-463	SEC 9003	VOL. I
U.S. POLICY ON	PL 100-463	SEC 9001	VOL. I
HUMANITARIAN ASSISTANCE	PL 100-463	SEC 9005	VOL. I
NICHOLSON, ARTHUR D., JR. MURDER OF SENSE OF CONGRESS	PL 99-661	SEC 1368	VOL. I
	PL 99-93	SEC 148	VOL. II
NONDISCRIMINATION WOMEN	PL 87-195	SEC 305	VOL. I
NONGOVERNMENTAL ORGANIZATIONS CHANNELING FOREIGN AID THROUGH	PL 99-83	SEC 311	VOL. I
NONPROLIFERATION OF NUCLEAR WEAPONS TREATY (SEE NUCLEAR WEAPONS, NONPROLIFERATION)			
NORTH AMERICA TRADE RELATIONS	PL 93-618	SEC 612	VOL. III
NORTH ATLANTIC ALLIANCE U.S. COMMITMENT	PL 96-9		VOL. II
NORTH ATLANTIC SALMON TREATY IMPLEMENTING LEGISLATION	PL 97-389	TITLE III	161
NORTH ATLANTIC TREATY ORGANIZATION (SEE NATO)			
NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS (10 USC CH 138)	PL 96-323	SEC 2	VOL. II
NORTH ATLANTIC TREATY ORGANIZATION MUTUAL SUPPORT ACT OF 1979 AMENDING 10 USC	PL 96-323	SEC 2	VOL. II
NORTH PACIFIC FISHERIES ACT OF 1954	PL 83-579		106
NORTH VIETNAM-U.S. RELATIONS (SEE ALSO INDOCHINA WAR) AGRICULTURAL COMMODITY SALES RESTRICTED	PL 83-480	SEC 411	VOL. I
TRADE	PL 93-618	SEC 403	VOL. III

		PAGE
NORTHERN IRELAND AND IRELAND PROMOTING RECONCILIATION	PL 99-415	VOL. I
NORTHERN MARIANA ISLANDS-U.S. RELATIONS COVENANT WITH IMPLEMENTATION OF	51 FR 40399	VOL. III
NORTHWEST ATLANTIC FISHERIES ACT OF 1950 REPEALED	PL 95-6 SEC 4	36
NUCLEAR DETONATION U.S. FOREIGN POLICY	PL 97-113 SEC 737	VOL. I
NUCLEAR ENERGY (SEE ATOMIC ENERGY)		
NUCLEAR FACILITIES ECONOMIC SUPPORT FUND RESTRICTIONS ON	PL 99-83 SEC 207 PL 97-113 SEC 735	VOL. I VOL. I
REPORT TO CONGRESS		377
NUCLEAR MATERIALS DISPOSAL OF	PL 97-425 SEC 223	VOL. II
EXPORTING TO ARGENTINA	PL 98-164 SEC 1007	VOL. II
EXPORTING TO INDIA	PL 98-164 SEC 1007	VOL. II
EXPORTING TO SOUTH AFRICA	PL 98-164 SEC 1007	VOL. II
STORAGE AND DISPOSAL OF U.S. AID TO NON-NUCLEAR WEAPONS STATES	PL 97-425 SEC 223	377
STORAGE OF	PL 97-425 SEC 223	377
NUCLEAR NON-PROLIFERATION EURATOM U.S. COOPERATION WITH	EO 12629	305
EXPORTS TO INDIA	EO 12218	334
FUNCTIONS DELEGATED	EO 12058	330
MATERIALS DISPOSAL OF	PL 97-425 SEC 223	377
POLICY	PL 95-242 SEC 2	314
REPORT ON	PL 95-242 SEC 601 PL 95-238	327 335
REPROCESSING TRANSFERS AID TERMINATION	PL 87-195 SEC 670 PL 95-242 SEC 201-203	VOL. I 319
SAFEGUARDS		332
TECHNOLOGY TRANSFERS AID RESTRICTIONS	PL 87-195 SEC 669	VOL. I
URANIUM EXPORT OF	PL 96-280 PL 96-533 SEC 110	VOL. I
NUCLEAR NON-PROLIFERATION ACT OF 1978	PL 95-242	314
NUCLEAR REGULATORY COMMISSION INSPECTOR GENERAL SPECIAL PROVISIONS	PL 95-452 SEC 8B	593
NUCLEAR RISK REDUCTION CENTERS CONGRESSIONAL SUPPORT FOR	PL 100-180 SEC 907	VOL. II
NUCLEAR TRANSFERS U.S. FOREIGN POLICY	PL 97-113 SEC 737	VOL. I
NUCLEAR WASTE POLICY ACT OF 1982	PL 97-425 PL 83-703 SEC 91	377 263
NUCLEAR WEAPONS CONSEQUENCES OF USING REPORTS TO CONGRESS	PL 99-145 SEC 1006	VOL. II
CRISIS STABILITY AND CONTROL STUDY OF MEASURES TO ENHANCE	PL 99-93 SEC 706	VOL. II
DEFINED	PL 83-703 SEC 11(D)	246
DEVELOPMENT OF IMPACT ON ARMS CONTROL POLICY	PL 87-297 SEC 36	VOL. II
REPORTS TO CONGRESS	PL 87-297 SEC 36(B)(2)	VOL. II
IMPROVED CONTROL OVER USE REPORT	PL 97-252 SEC 1123	VOL. I
INTERNATIONAL COOPERATION INFORMATION EXCHANGE	PL 83-703 SEC 144	291
MX MISSILE WARHEAD FUNDING RESTRICTION	PL 99-145 SEC 1426	VOL. I
PROGRAM RESTRICTIONS	PL 99-145 SEC 1426	VOL. I
STANDARD MISSILE (SM-2(N)) FUNDING RESTRICTION	PL 99-145 SEC 1426	VOL. I
TACTICAL USE OF EUROPE	PL 93-365 SEC 302	VOL. I
TESTING SENSE OF CONGRESS	PL 99-661 SEC 1002	VOL. II
NUCLEAR WINTER POLICY IMPLICATIONS REPORT TO CONGRESS	PL 99-145 SEC 1006	VOL. II
REPORT TO CONGRESS	PL 99-661 SEC 1371	VOL. I
US-USSR STUDY ON CONSEQUENCES OF	PL 99-93 SEC 708	VOL. II

			PAGE
O			
OAS			
MILITARY FORCES	PL 87-195	SEC 501	VOL. I
POLICY TOWARD CUBA	PL 87-733		VOL. II
PRIVILEGES AND IMMUNITIES	PL 82-486		VOL. II
SANCTIONS			
U.S. FOREIGN AID	PL 86-735	SEC 2	VOL. I
U.S. CONTRIBUTION TO, 1982-83	PL 97-241	SEC 105	VOL. II
OATHS OF ALLEGIANCE (SEE LOYALTY)			
OAU			
PRIVILEGES AND IMMUNITIES	PL 79-291	SEC 12	VOL. II
OBLIGATIONS			
VALID	31 USC 1108		VOL. I
OCEANOGRAPHY (SEE SEA LAW)			
OECD			
(SEE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT)			
DEVELOPMENT ASSISTANCE COMMITTEE	PL 87-195	SEC 631	VOL. I
PROHIBITED PRACTICES INTERNATIONAL AGREEMENT	PL 100-418	SEC 5003(D)	VOL. III
	PL 100-418	SEC 5003(D)(1)	VOL. III
OFFICE OF EMERGENCY PLANNING			
TRADE AGREEMENTS	PL 87-794	SEC 232	VOL. III
OFFICE OF INTERNATIONAL COOPERATION AND DEVELOPMENT			
APPROPRIATIONS, 1989	PL 100-460		VOL. I
OFFSETS			
IMPACT ON DEFENSE PREPAREDNESS			
REPORT TO CONGRESS	50 USC 2099		VOL. III
OIL			
(SEE ALSO INTERNATIONAL ENERGY AGENCY)			
(SEE ALSO INTERNATIONAL ENERGY PROGRAM)			
DOMESTICALLY PRODUCED			
EXPORT CONTROLS	PL 96-72	SEC 7(D)	VOL. III
EXPORT CONTROLS			
EXCLUSIONS	PL 96-72	SEC 7(F)	VOL. III
IMPORT ADJUSTMENT	PL 87-794	SEC 232(F)	VOL. III
PERSIAN GULF			
DISRUPTION PLANS	PL 100-180	SEC 1222	VOL. I
SUPPLY INTERRUPTION			
PREPARATION FOR	PL 94-163	SEC 271-272	362
REPORT TO CONGRESS	PL 97-229	SEC 6	374
OIL AND GAS			
ALASKAN PIPELINE	PL 93-153	SEC 301	345
ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES	PL 93-618	SEC 502	VOL. III
OKINAWA			
CHEMICAL MUNITIONS	PL 91-672	SEC 13	VOL. I
OLYMPIC GAMES			
BOYCOTT OF	PL 96-533	SEC 718	VOL. I
OMINBUS BUDGET RECONCILIATION ACT OF 1982	PL 97-253		VOL. I
OMNIBUS DIPLOMATIC SECURITY AND ANTITERRORISM ACT OF 1986	PL 99-399		VOL. II
OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988	PL 100-418		VOL. III
OPIC			
AUDIT OF FINANCIAL STATEMENTS	PL 87-195	SEC 239(C)	VOL. I
BOARD OF DIRECTORS	PL 87-195	SEC 233(B)	VOL. I
BRIBERY	PL 87-195	SEC 237(L)	VOL. I
CAPITAL STOCK	PL 87-195	SEC 232	VOL. I
DIRECT INVESTMENT	PL 87-195	SEC 234(C)	VOL. I
DIRECT INVESTMENT FUND	PL 87-195	SEC 235	VOL. I
ESTABLISHED	EO 11579		VOL. I
EXPENDITURES AND LOANS LIMITS ON	PL 100-461	TITLE II	VOL. I
FACULTATIVE REINSURANCE PROGRAM	PL 87-195	SEC 234A	VOL. I
FUNCTIONS	PL 87-195	SEC 234	VOL. I
GUARANTIES OF LOANS	PL 87-195	SEC 234(B)	VOL. I
	PL 87-195	SEC 237	VOL. I
HUMAN RIGHTS	PL 87-195	SEC 239(I)	VOL. I
IMPACT OF GUARANTEES ON EMPLOYMENT	PL 87-195	SEC 231	VOL. I
INCOME	PL 87-195	SEC 236	VOL. I
INSURANCE	PL 87-195	SEC 234(A)	VOL. I
INSURANCE RESERVE AND THE GUARANTY RESERVE	PL 87-195	SEC 235	VOL. I
LEGAL CAPACITY	PL 87-195	SEC 239	VOL. I

			PAGE
OPIC—CONTINUED			
LIABILITIES	PL 87-195	SEC 235	VOL. I
MULTILATERAL ORGANIZATIONS PARTICIPATING	PL 87-195	SEC 234	VOL. I
MULTINATIONAL CORPORATIONS	PL 87-195	SEC 234	VOL. I
OFFICERS	PL 87-195	SEC 233(D)	VOL. I
ORGANIZATION	PL 87-195	SEC 233	VOL. I
OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 1988	S 2757		VOL. I
	PL 87-195	SEC 231	VOL. I
POLICY			
PREDECESSOR AUTHORITY TRANSFERRED	PL 87-195	SEC 235	VOL. I
PRESIDENT OF	PL 87-195	SEC 233(C)	VOL. I
PRIVATE INSURANCE COMPANIES	PL 87-195	SEC 234	VOL. I
PROGRAMS IN HAITI PROHIBITIONS ON	S 2757	SEC 111	VOL. I
PURPOSE	PL 87-195	SEC 231	VOL. I
REPORTS TO CONGRESS	PL 87-195	SEC 240A	VOL. I
STAFF	PL 87-195	SEC 233(D)	VOL. I
SURVEYS	PL 87-195	SEC 234(D)	VOL. I
TECHNICAL ASSISTANCE	PL 87-195	SEC 234(E)	VOL. I
WORKERS RIGHTS	PL 87-195	SEC 231A	VOL. I
ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (SEE OECD)			
ORGANIZATION OF AFRICAN UNITY (SEE OAU)			
ORGANIZATION OF AMERICAN STATES (SEE OAS)			
ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES (OPEC)			
DUTY-FREE TREATMENT DENIED	PL 93-618	SEC 502	VOL. III
OUTER SPACE			
EAST-WEST COOPERATION	PL 98-562		416
INTERNATIONAL SPACE DOCKING	PL 100-685	SEC 210	414
INTERNATIONAL SPACE SETTLEMENTS	PL 100-685	SEC 217	414
OZONE LEVEL			
INTERNATIONAL MONITORING OF	PL 100-685	SEC 410	414
RESEARCH			
INTERNATIONAL COOPERATION	PL 85-568	SEC 205	409
	PL 94-39	SEC 404	411
	PL 100-147	SEC 106(E)	412
UPPER ATMOSPHERE	PL 94-39	SEC 401-403	410
SPACE STATION			
INTERNATIONAL COOPERATION	PL 100-147		412
UNITED STATES INTERNATIONAL SPACE STATION	PL 100-685		413
OVERSEAS DIFFERENTIALS AND ALLOWANCES ACT	PL 84-885	SEC 2	VOL. II
OVERSEAS PRIVATE INVESTMENT CORPORATION (SEE OPIC)			
OVERSEAS WORKLOAD PROGRAM REPORT TO CONGRESS	PL 100-180	SEC 1021	VOL. I
P			
PACIFIC AREAS			
POLICY			
REPORTS TO CONGRESS	PL 99-239	TITLE III	VOL. III
PACIFIC SALMON COMMISSION	PL 99-5		165
PACIFIC SALMON TREATY ACT OF 1985	PL 99-5		165
AUTHORIZATION OF APPROPRIATIONS	PL 99-5	SEC 12	173
PAKISTAN-U.S. RELATIONS			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
DISASTER RELIEF	PL 87-195	SEC 494	VOL. I
FOREIGN AID	PL 87-195	SEC 620E	VOL. I
CONDITIONS FOR	PL 87-195	SEC 620(E)	VOL. I
PALESTINE (SEE ALSO PLO)			
SPECIAL RIGHTS UNITS SENSE OF CONGRESS	PL 95-426	SEC 614	VOL. II
PAN AMERICAN GAMES			
EXCHANGE RELATED ACTIVITIES	PL 99-93	SEC 206	VOL. II
U.S. CONTRIBUTION	PL 94-350	SEC 110	VOL. II
PAN AMERICAN HEALTH ORGANIZATION			
U.S. CONTRIBUTION TO, 1982-83	PL 97-241	SEC 105	VOL. II
PANAMA			
MILITARY AID (U.S.) LIMITATION ON	PL 100-456	SEC 1302	VOL. I

		PAGE
PANAMA CANAL		
NEGOTIATIONS	PL 94-350 SEC 114	VOL. II
	PL 95-105 SEC 506	VOL. II
REALIGNMENT OF MILITARY INSTALLATIONS	PL 95-485 SEC 817	VOL. I
PANAMA CANAL ACT OF 1979	PL 96-70	VOL. II
DEFINITIONS AND RECOMMENDATION FOR LEGISLATION	PL 96-70 SEC 3	VOL. II
DELEGATION OF FUNCTIONS	EO 12215	VOL. II
SECRETARY OF DEFENSE	EO 12215	VOL. II
PANAMA CANAL COMMISSION	EO 12215 SEC 1-3	VOL. II
REPORT TO CONGRESS	PL 100-203 SEC 5418	VOL. II
PANAMA-U.S. RELATIONS		
CANAL NEGOTIATIONS	PL 94-350 SEC 114	VOL. II
DEFENSE OF CANAL	PL 96-70 SEC 1108	VOL. II
FOREIGN AID		
CONDITIONS FOR	PL 100-461 SEC 564	VOL. I
GENERAL MANUEL NORIEGA	PL 100-456 SEC 1303	VOL. I
PROPERTY TRANSFERS	PL 96-70 SEC 1504	VOL. II
CONGRESSIONAL RESTRAINTS ON	PL 96-70 SEC 1344	VOL. II
REPORTS	PL 96-70 SEC 3301	VOL. II
STATIONING OF U.S. MILITARY FORCES	PL 96-70 SEC 1111	VOL. II
SUGAR QUOTA ELIMINATION OF	PL 100-461 SEC 565	VOL. I
TAX EXPENDITURES CONGRESSIONAL RESTRAINTS ON	PL 96-70 SEC 1344	VOL. II
TRANSACTIONS PROHIBITED	EO 12635	VOL. III
U.S. POLICY TOWARD	PL 100-180 SEC 1403	VOL. I
PAR VALUE MODIFICATION ACT	PL 92-268	VOL. III
PARAGUAY-U.S. RELATIONS		
MILITARY AID	PL 99-83 SEC 706	VOL. I
PARAQUAT		
USE AS DRUG CONTROL	PL 87-195 SEC 481(D)	VOL. I
PASSPORT OFFICE		
(SEE PASSPORTS)		
PASSPORTS		
APPLICATION FOR	40 STAT 217	VOL. II
COMMUNIST ORGANIZATIONS	64 STAT 987	VOL. II
CONSULAR OFFICERS		
PUNISHABLE OFFENSES	PL 80-772 SEC 1541	VOL. II
COUNTERFEITING	PL 80-772 SEC 1543	VOL. II
CRIMINAL MISUSE	PL 80-772 SEC 1541-46	VOL. II
STATUTE OF LIMITATIONS	65 STAT 107 SEC 3291	VOL. II
DELETING INFORMATION ON PLACE OF BIRTH	PL 100-204 SEC 1253	VOL. II
DIPLOMATIC	PL 95-426 SEC 125	VOL. II
DURATION	44 STAT 887 SEC 2	VOL. II
FEES	41 STAT 739	VOL. II
FILES MINIATURIZATION	PL 94-350 SEC 106	VOL. II
FORGERIES	PL 80-772 SEC 1543	VOL. II
NATIONAL EMERGENCY	66 STAT 190	VOL. II
OATH OF ALLEGIANCE	32 STAT 386	VOL. II
OFFICES	PL 82-414 SEC 104(C)	VOL. II
PROOF OF CITIZENSHIP	PL 84-885 SEC 33	VOL. II
RESTRICTION	44 STAT 887	VOL. II
SECRETARY OF STATE'S AUTHORITY	EO 11295	VOL. II
STATE DEPARTMENT'S AUTHORITY	PL 84-885 SEC 1	VOL. II
TRAVEL DOCUMENT AND ISSUANCE SYSTEM	PL 94-141 SEC 102	VOL. II
TRAVEL RESTRICTIONS	PL 95-426 SEC 124	VOL. II
PASSPORTS AND VISAS		
PLACE OF BIRTH		
REPORT TO CONGRESS ON DELETING	PL 99-399 SEC 703	VOL. II
PATENTS		
(SEE ALSO TRADEMARKS)		
ACDA	PL 87-297 SEC 32	VOL. II
FOREIGN AID		
CLAIMS	PL 87-195 SEC 606	VOL. I
TRADE AGREEMENTS	PL 93-618 SEC 405	VOL. III
UNFAIR IMPORT PRACTICES	PL 71-361 SEC 337	VOL. III
PEACE AND CONFLICT RESOLUTION, NATIONAL ACADEMY OF		
COMMISSION ON	PL 95-561 SEC 1511	VOL. II
PEACE CORPS	EO 12137	VOL. I
(SEE ALSO FOREIGN SERVICE)		
AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 406	VOL. I
APPOINTMENTS AND		
ASSIGNMENTS	PL 87-293 SEC 7(A)	VOL. I
NON PARTISAN	PL 87-293 SEC 25	VOL. I
APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
AUTHORITY FOR	PL 87-293 SEC 10	VOL. I

			PAGE
PEACE CORPS--CONTINUED			
AUTHORIZATION OF APPROPRIATIONS	PL 87-293	SEC 3	VOL. I
AUTHORIZATION OF APPROPRIATIONS, 1984	PL 98-151	SEC 101(B)(2)	VOL. I
DIRECTOR	PL 87-293	SEC 4	VOL. I
DIRECTOR OF TRANSFER OF FUNCTIONS TO	PL 97-113	SEC 601(B)	VOL. I
DISABLED PERSONS AID TO	PL 87-293	SEC 3(H)	VOL. I
EMPLOYMENT WITH LIMITATION ON LENGTH OF	PL 99-83	SEC 1103(B)	VOL. I
FOREIGN CURRENCIES USED	PL 87-293	SEC 17	VOL. I
FOREIGN GOVERNMENTS USING PERSONNEL	PL 87-293	SEC 14	VOL. I
FOREIGN NATIONALS PARTICIPATING	PL 87-293	SEC 9	VOL. I
FORMER VOLUNTEERS IN CIVIL SERVICE	EO 11103		VOL. I
FUNCTIONS DELEGATED	PL 87-293	SEC 4	VOL. I
FUNDS	PL 87-293	SEC 15	VOL. I
	PL 87-293	SEC 15(A)	VOL. I
TRAINING EXPENSES	PL 87-293	SEC 15(C)	VOL. I
INDEPENDENT FROM ACTION	PL 87-293	SEC 2A	VOL. I
INTERDEPARTMENTAL COOPERATION	EO 12137	SEC 1-602	VOL. I
INTERNATIONAL ORGANIZATIONS USING PERSONNEL	PL 87-293	SEC 14	VOL. I
LANGUAGE PROFICIENCY	PL 87-293	SEC 24	VOL. I
NATIONAL ADVISORY COUNCIL			
TERMINATION OF ADVISORY BODIES WITH SIMILAIR FUNCTIONS	PL 99-83	SEC 1104(B)	VOL. I
PERSONNEL	PL 87-293	SEC 5	VOL. I
ALLOWANCE	PL 87-293	SEC 5(C)	VOL. I
AS U.S. GOVERNMENT EMPLOYEES	PL 87-293	SEC 5(F)-(H)	VOL. I
BENEFITS WHERE CHILDREN	PL 87-293	SEC 5(M)-(N)	VOL. I
CAREER COUNSELING IN THE UNITED STATES	PL 87-293	SEC 5(K)	VOL. I
CERTIFICATE OF SERVICE	EO 11103	SEC 3	VOL. I
COMPENSATION OF	PL 89-134	SEC 5	VOL. I
COUNTRY REPRESENTATIVE	PL 87-293	SEC 7(C)	VOL. I
FOREIGN SERVICE ACT APPLICABLE	PL 87-293	SEC 7(A)	VOL. I
HEALTH CARE OF	PL 87-293	SEC 5(E)	VOL. I
IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS ABROAD	PL 87-293	SEC 5(L)	VOL. I
OATH UPON ENROLLMENT	PL 87-293	SEC 5(J)	VOL. I
SELECTION	PL 87-293	SEC 5(A)	VOL. I
PERSONNEL SYSTEM IMPLEMENTATION OF	PL 89-134	SEC 5	VOL. I
PRESIDENT FUNCTIONS RESERVED TO	EO 12137	SEC 1-3	VOL. I
PURPOSE STATED	PL 87-293	SEC 2	VOL. I
REPORTS TO CONGRESS	PL 99-83	SEC 1103(B)	VOL. I
REPORTS 1121	PL 87-293	SEC 11	VOL. I
SEAL AND NAME RIGHT	PL 87-293	SEC 19	VOL. I
SECURITY INVESTIGATION	PL 87-293	SEC 22	VOL. I
STUDENT LOANS			
CONDITIONS FOR CANCELLATION	PL 99-498		VOL. I
TRAINING OF VOLUNTEERS	PL 87-293	SEC 8	VOL. I
TRANSFER OF FUNCTIONS REPORT TO CONGRESS	PL 97-113	SEC 601(F)	VOL. I
TRANSFER OF PROPERTY FROM ACTION	PL 97-113	SEC 601(C)	VOL. I
TRUST TERRITORY OF THE PACIFIC ISLANDS	PL 83-451	SEC 2	508
UNIVERSAL MILITARY TRAINING AND SERVICE ACT	PL 87-293	SEC 23	VOL. I
WOMEN	PL 87-293	SEC 3(D)	VOL. I
PEACE CORPS ACT	PL 87-293		VOL. I
PEACE CORPS NATIONAL ADVISORY COUNCIL	PL 87-293	SEC 12	VOL. I
PEACE, UNITED STATES INSTITUTE OF			
NOMINATIONS TO THE BOARD OF	PL 99-93	SEC 802	VOL. II
PEACE, UNITED STATES INSTITUTE OF, ACT	PL 98-525	SEC 1701	VOL. II
PEACEKEEPING OPERATIONS	PL 87-195	SEC 551	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE III	VOL. I
MULTINATIONAL FORCE AND OBSERVERS	PL 97-132		VOL. II
PERSIAN GULF			

		PAGE
PERSIAN GULF--CONTINUED		
ACTIVITIES IN		
ADHERENCE TO		
INTERNATIONAL LAW---	PL 100-204 SEC 1233	VOL. II
COMMENDATION OF U.S. FORCES	PL 100-180 SEC 1401	VOL. I
STINGER ANTIAIRCRAFT		
MISSILES		
CONDITIONS FOR		
SUPPLYING----------	PL 100-461 SEC 566	VOL. I
WEAPONS TRANSFERS TO		
SENSE OF CONGRESS----	PL 100-418 SEC 2102	VOL. III
PERU-U.S. RELATIONS		
FOREIGN AID		
CONDITIONS FOR------	PL 99-83 SEC 612	VOL. I
HUMAN RIGHTS----------	PL 99-83 SEC 707	VOL. I
PESTICIDE MONITORING		
IMPROVEMENTS ACT OF 1988----	PL 100-418 SEC 4701	VOL. I
PETROLEUM		
(SEE OIL)		
PHILIPPINES-U.S. RELATIONS		
DEVELOPMENT ASSISTANCE		
APPROPRIATIONS, 1989--	PL 100-461 TITLE II	VOL. I
FOREIGN AID		
TIED TO U.S. SECURITY		
INTERESTS----------	PL 99-83 SEC 901	VOL. I
FOREIGN AID, 1989--------	PL 100-461 TITLE II	VOL. I
MILITARY BASES		
SECURITY ASSESSMENT---	PL 100-456 SEC 1309	VOL. I
MILITARY BASES IN--------	PL 100-456 SEC 1308	VOL. I
TAXATION AS U.S.		
COMMONWEALTH----------	PL 79-291 SEC 4	VOL. II
PL 480		
(SEE AGRICULTURE, SECRETARY OF)		
OPERATION OF		
REVIEW----------	PL 95-113 SEC 1210	VOL. I
PLO		
CANCELLING PROHIBITIONS		
CERTIFICATION BY THE		
PRESIDENT----------	PL 100-204 TITLE X	VOL. II
CONDITIONS FOR U.S.		
RECOGNITION----------	PL 100-461 SEC 529	VOL. I
FOREIGN AID		
PROHIBITION ON------	PL 100-461 SEC 526	VOL. I
FURTHERING INTERESTS OF		
PROHIBITIONS AGAINST--	PL 100-204 TITLE X	VOL. II
IMF MEMBERSHIP		
U.S. RESPONSE--------	PL 79-171 SEC 37	VOL. III
RECOGNITION OF BY U.S.		
CONDITIONS ON--------	PL 99-591 SEC 530	544
U.N. PROGRAMS IN SUPPORT OF		
REPORT TO CONGRESS----	PL 97-241 SEC 104(C)	VOL. II
U.S. CONTRIBUTION TO U.N.--	PL 97-241 SEC 104	VOL. II
USE OF U.S. CONTRIBUTION TO		
U.N.----------	PL 98-164 SEC 114(B)	VOL. II
POLAND		
AMERICAN CHILDREN'S		
HOSPITAL		
ZABLOCKI OUTPATIENT		
FACILITY------	PL 98-266	VOL. I
ESF		
SOLIDARITY----------	PL 100-461 TITLE II	VOL. I
POLAND-U.S. RELATIONS		
EMBARGO		
IN THE EVENT OF SOVIET		
AGGRESSION----------	PL 97-145 SEC 7	VOL. III
HUMANITARIAN AID----------	PL 97-113 SEC 708	VOL. I
LOAN GUARANTEES------	PL 100-460	VOL. I
POLISH CURRENCY		
USE OF----------	PL 97-113 SEC 709	VOL. I
RESEARCH CENTER ON JEWISH		
HISTORY AND CULTURE		
APPROPRIATIONS-------	PL 100-461 SEC 583	VOL. I
SCIENCE AND TECHNOLOGY-----	PL 97-241 SEC 110	VOL. II
SOLIDARITY		
U.S. SUPPORT FOR------	PL 100-204 SEC 1207	VOL. II
POLICE TRAINING		
EL SALVADOR		
FORFIGN AID FOR------	PL 87-195 SEC 660(D)	VOL. I
FOREIGN AID FOR----------	PL 87-195 SEC 660	VOL. I
HONDURAS		
FOREIGN AID FOR-------	PL 87-195 SEC 660(D)	VOL. I
POLITICAL PRISONERS		
U.S. AID CUT-OFF------	PL 93-189 SEC 32	VOL. I
POLITICAL TESTS		
(SEE LOYALTY)		
POLLUTION		
MARINE RESOURCES----------	PL 96-478	84
POPULATION GROWTH		

		PAGE
POPULATION GROWTH--CONTINUED		
AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 405	VOL. I
FOREIGN AID	PL 87-195 SEC 104	VOL. I
FOREIGN CURRENCIES	PL 87-195 SEC 613	VOL. I
FOREIGN CURRENCIES FROM AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 104(H)	VOL. I
INVOLUNTARY ABORTIONS FOREIGN AID PROHIBITION	PL 100-461 TITLE II	VOL. I
INVOLUNTARY STERILIZATION AID PROHIBITION	PL 100-461 SEC 536	VOL. I
PORTUGAL ECONOMIC SUPPORT FUND	PL 99-83 SEC 204	VOL. I
PORTUGAL-U.S. RELATIONS		39
FISHERIES	PL 96-561 SEC 145	VOL. I
FOOD AID	PL 94-329 SEC 409	VOL. I
PORTUGUESE AFRICAN COLONIES	PL 93-559 SEC 50	
POWS (INDOCHINA WAR) LAOTIAN AGREEMENT AND PROTOCOL	PL 93-189 SEC 34	VOL. I
POWS (SEE ALSO INDOCHINA WAR)		
PRESIDENT (SEE ALSO REPORTS TO CONGRESS)		
ADVISED ON TRADE	PL 93-618 SEC 131-132	VOL. III
AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 101	VOL. I
ALASKAN PIPELINE NEGOTIATIONS	PL 93-153 SEC 301	345
ARMS SALES DELEGATION OF FUNCTIONS	EO 11958 SEC 1	VOL. I
ATOMIC ENERGY	EO 10841	312
CHEMICAL HERBICIDES	EO 11850	VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE FUNCTIONS RESERVED	EO 11034 SEC 7	VOL. II
EXPORT CONTROLS	EO 12002	VOL. III
DELEGATION OF AUTHORITY	PL 96-72 SEC 4(E)	VOL. III
FOREIGN AID PROGRAMS ADMINISTRATION OF	EO 12163	VOL. I
CERTIFICATION OF NATIONAL INTEREST	PL 83-680 SEC 5	183
SUSPENSION OF	PL 87-195 SEC 620	VOL. I
FOREIGN SERVICE	PL 81-73 SEC 3	VOL. II
IMPORTING EDUCATIONAL AND CULTURAL MATERIALS	EO 12047	VOL. II
	PL 89-259	VOL. II
MILITARY AID ISRAEL	PL 93-199 NOTE	VOL. I
MIDDLE EAST	PL 85-7 SEC 3-4	VOL. II
MODIFYING IMPORT DUTIES	PL 87-794 SEC 201	VOL. III
NATIONAL EMERGENCY POWERS	PL 94-412	VOL. II
TRAVEL CONTROL	66 STAT 190	VOL. II
PEACE CORPS FUNCTIONS RESERVED	EO 12137 SEC 1-3	VOL. I
RIOT CONTROL	EO 11850	VOL. II
TRADE AGREEMENTS	EO 11846 SEC 4	VOL. III
ENFORCEMENT OF U.S. RIGHTS	PL 93-618 SEC 301	VOL. III
TRADING WITH THE ENEMY REGULATING	PL 65-91 SEC 5	VOL. III
TRUST TERRITORY OF THE PACIFIC ISLANDS		507
ADMINISTRATION OF	PL 83-451 SEC 1	VOL. II
U.N. ECONOMIC SANCTIONS	PL 79-264 SEC 5	VOL. III
U.S. TRADE REPRESENTATIVE	PL 93-618 SEC 141	
WAR POWERS (SEE WAR POWERS)		
PRESIDENT'S EMERGENCY FOOD ASSISTANCE ACT OF 1984	PL 98-473 SEC 301	VOL. I
PRESIDENTIAL TASK FORCE ON PROJECT JUSTICE	PL 99-83 SEC 713	VOL. I
PRICE CONTROL (SEE ANTI-DUMPING)		
PRIMARY DEALERS ACT OF 1988	PL 100-418 SEC 3501	VOL. III
PRISONERS OF WAR (SEE INDOCHINA WAR) (SEE POWS)		
PRIVATE AND VOLUNTARY ORGANIZATIONS (SEE PVOS)		
PRIVATE ENTERPRISE (SEE ALSO NATIONALIZATIONS) (SEE ALSO OPIC)		

			PAGE
PRIVATE ENTERPRISE--CONTINUED			
AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 103(E)	VOL. I
	PL 83-480	SEC 107	VOL. I
FOREIGN CURRENCY USES	PL 83-480	SEC 108	VOL. I
ARMS SALES GUARANTEES	PL 90-629	SEC 24	VOL. I
FOREIGN AID			
PRIVATE SECTOR REVOLVING FUND	PL 87-195	SEC 108	VOL. I
FOREIGN COUNTRIES			
MDB EFFORTS TO DEVELOP AND TRANSFORM	PL 95-118	SEC 1607	VOL. III
USIA	PL 80-402	SEC 1003	VOL. II
	PL 80-402	SEC 1005	VOL. II
PRIVATE SECTOR PROGRAM AUTHORIZATION, 1984	PL 98-164	SEC 206	VOL. II
PRIVATE SECTOR REVOLVING FUND	PL 87-195	SEC 108	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
PRIVILEGES AND IMMUNITIES			
ADB	PL 89-369	SEC 9	VOL. III
BRETTON WOODS AGREEMENTS ACT	PL 79-171	SEC 11	VOL. III
COMMISSION OF THE EUROPEAN COMMUNITIES	PL 92-499		VOL. II
CULTURAL IMPORTS	PL 89-259		VOL. II
DIPLOMATS	PL 95-393		VOL. II
FOREIGN STATES	PL 94-583	SEC 4	VOL. II
IADB	PL 86-147	SEC 9	VOL. III
IDA	PL 86-565	SEC 9	VOL. III
IFC	PL 84-350	SEC 9	VOL. III
IMMIGRATION LAW	PL 79-291	SEC 7-9	VOL. II
INTERNATIONAL ORGANIZATIONS			
DESIGNATED BY THE PRESIDENT	PL 79-291	SEC 1	VOL. II
SCOPE	PL 79-291	SEC 2	VOL. II
SEARCH AND SEIZURE	PL 79-291	SEC 2	VOL. II
TAXES	PL 79-291	SEC 3-6	VOL. II
JURIDICAL	PL 79-291	SEC 2	VOL. II
LEGAL SUITS	PL 79-291	SEC 2	VOL. II
LIABILITY INSURANCE	PL 95-393	SEC 6	VOL. II
OAS	PL 82-486		VOL. II
OAU	PL 79-291	SEC 12	VOL. II
U.N.	PL 80-357		VOL. II
PROPAGANDA (FOREIGN) CLASSIFICATION OF	PL 75-583	SEC 4	532
PROPAGANDA			
(SEE ALSO LOBBYING)			
PROHIBITING USE OF FUNDS FOR	PL 93-126	SEC 14	VOL. II
PROPAGANDISTS			
(SEE FOREIGN AGENTS REGISTRATION)			
PROPERTY			
(SEE ALSO CLAIMS)			
(SEE ALSO FOREIGN SERVICE BUILDINGS ACT OF 1926)			
(SEE ALSO GIFTS)			
(SEE ALSO NATIONALIZATIONS)			
ACDA DISPOSAL OF	PL 87-297	SEC 41	VOL. II
PROPERTY ABROAD (U.S.)			
DESTRUCTION OF FOREIGN AID CUT-OFF	PL 87-195	SEC 620(J)	VOL. I
PUBLIC DIPLOMACY			
RESTRICTIONS ON USE OF FUNDS	PL 100-204	SEC 141	VOL. II
PUBLIC DIPLOMACY, U.S. ADVISORY COMMISSION ON	PL 80-402	SEC 604	VOL. II
PUBLIC OPINION			
(SEE USIA)			
PUBLIC RELATIONS			
(SEE FOREIGN AGENTS REGISTRATION)			
PUBLICITY			
(SEE LOBBYING)			
PUERTO RICO			
CARIBBEAN BASIN INITIATIVE	PL 98-67	SEC 214	VOL. III
CARIBBEAN DEVELOPMENT BANK MEMBERSHIP	PL 93-559	SEC 52	VOL. I
PVOS			
AGRICULTURAL COMMODITY SALES			
USING FOREIGN CURRENCIES	PL 83-480	SEC 207	VOL. I
DEVELOPMENT ASSISTANCE			
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
FOOD AID			
DISTRIBUTION OF	PL 83-480	SEC 202(C)	VOL. I
FOREIGN AID	PL 87-195	SEC 123	VOL. I
RESTRICTIONS ON	PL 100-461	TITLE II	VOL. I

			PAGE
PVOS--CONTINUED			
REQUIREMENTS FOR			
FOR DOCUMENTATION AND			
STRATION	PL 100-461	SEC 538	VOL. I
Q			
QUOTAS			
(SEE IMPORT DUTIES)			
R			
RADIO BROADCASTING TO CUBA ACT	PL 98-111		VOL. II
IMPLEMENTATION OF	PL 99-93	SEC 203	VOL. II
RADIO BROADCASTING TO CUBA,			
BOARD FOR	PL 98-111	SEC 5	VOL. II
RADIO FREE AFGHANISTAN	PL 93-129	SEC 14	VOL. II
RADIO FREE EUROPE AND RADIO			
LIBERTY			
AUTHORIZATION OF			
APPROPRIATIONS	PL 80-402	SEC 703	VOL. II
BALTIC DIVISION	PL 98-164	SEC 307	VOL. II
BOARD FOR	PL 93-129	SEC 11	VOL. II
BOARD FOR INTERNATIONAL			
BROADCASTING	PL 93-129	SEC 4	VOL. II
CONTRIBUTIONS TO	PL 93-129	SEC 7	VOL. II
CURRENCY GAINS	PL 93-129	SEC 8(B)	VOL. II
ESTABLISHMENT	PL 93-129	SEC 3	VOL. II
FUNCTIONS	PL 93-129	SEC 4	VOL. II
FUNDING AUTH	PL 93-129	SEC 8	VOL. II
ORGANIZATION	PL 93-129	SEC 3	VOL. II
PURPOSE OF	PL 93-129	SEC 2	VOL. II
SEC OF STATE'S ROLE	PL 93-129	SEC 6	VOL. II
BOARD FOR INTERNATIONAL			
BROADCASTING ACT OF 1973	PL 93-129		VOL. II
COMMUNIST COUNTRIES USE OF			
FACILITIES	PL 93-129	SEC 9	VOL. II
CONTRIBUTIONS TO	PL 93-129	SEC 5	VOL. II
MACCABEE PROGRAMING	PL 99-93	SEC 306	VOL. II
MANAGEMENT OF	PL 99-93	SEC 304	VOL. II
PERSONNEL			
RETIREMENT BENEFITS	PL 93-129	SEC 12	VOL. II
PRESIDENT OF			
SALARY LIMITATION	PL 93-129	SEC 13	VOL. II
RECORDS	PL 93-129	SEC 5	VOL. II
SOVIET JAMMING			
POLICY ON	PL 98-164	SEC 308	VOL. II
SOVIET RELIGIOUS			
PERSECUTION			
BROADCASTING POLICY	PL 98-164	SEC 306	VOL. II
RADIO LIBERTY			
(SEE RADIO FREE EUROPE AND			
RADIO LIBERTY)			
RADIO MARTI			
(SEE CUBA, RADIO			
BROADCASTING TO)			
RECIPROCAL ASSISTANCE			
(SEE MUTUAL DEFENSE)			
RECOGNITION (DIPLOMATIC)			
SIGNIFICANCE	S RES 91-205		VOL. II
RECONSTRUCTION FINANCE			
CORPORATION			
PAYMENTS BY EXPORT-IMPORT			
BANK	PL 79-173	SEC 4,5	VOL. III
RED CROSS			
U.S. CONTRIBUTION TO,			
1982-83	PL 97-241	SEC 106	VOL. II
RED SHIELD OF DAVID			
STATUS OF RECOGNITION	PL 100-204	SEC 742	VOL. II
REFUGEE ACT OF 1980	PL 96-212		VOL. II
REFUGEE EDUCATION ASSISTANCE			
ACT OF 1980	PL 96-422		VOL. II
REFUGEE RELIEF			
ADMINISTRATION	EO 11077		VOL. II
ADMISSION INTO U.S.	EO 12208		VOL. I
AFGHANISTAN	PL 99-145	SEC 305	VOL. I
AFRICA	PL 99-8	SEC 3	VOL. II
APPROPRIATIONS, 1988	PL 100-393		VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
ARABS	PL 87-195	SEC 301	VOL. I
AUTHORIZATION OF			
APPROPRIATIONS	PL 87-510	SEC 2	VOL. II
AUTHORIZATION OF			
APPROPRIATIONS, 1984-85	PL 98-164	SEC 102(4)	VOL. II
AUTHORIZATION OF			
APPROPRIATIONS, 1986-87	PL 99-93	SEC 101(4)	VOL. II
AUTHORIZATION OF			
APPROPRIATIONS, 1988-89	PL 100-204	SEC 104	VOL. II
CONSULTATION	EO 12208		VOL. II
CONTRACTS	PL 87-510	SEC 3	VOL. II

		PAGE
REFUGEE RELIEF--CONTINUED		
CUBANS	EO 11077 SEC 2	VOL. II
CUBANS AND HAITIANS		
COSTS OF	PL 97-241 SEC 502	VOL. II
EAST EUROPE		
AUTHORIZATION, 1977	PL 94-350 SEC 105	VOL. II
AUTHORIZATION, 1978	PL 95-105 SEC 104	VOL. II
EL SALVADOR	PL 98-164 SEC 111	VOL. II
HONDURAS	PL 99-83 SEC 704	VOL. I
ISRAEL	PL 99-93 SEC 108	VOL. II
LEBANON	PL 98-164 SEC 111	VOL. II
LIMITATIONS ON USE OF FUNDS	PL 99-93 SEC 110	VOL. II
LOANS	PL 87-510 SEC 3	VOL. II
OFFICE OF REFUGEE PROGRAMS		
APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
SOUTHEAST ASIA	PL 99-93 SEC 108	VOL. II
SOVIET JEWS		
RESETTLEMENT IN ISRAEL	PL 97-241 SEC 107	VOL. II
TRANSFER OF FUNDS FOR	PL 87-510 SEC 4	VOL. II
U.S. COORDINATOR FOR	PL 96-212 SEC 301	VOL. II
U.S. EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND	PL 87-510 SEC 2(C)	VOL. II
U.S. PURPOSE OF	PL 96-212 SEC 101	VOL. II
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES		
AUDITS OF U.S. FUNDS	PL 87-510 SEC 8	VOL. II
VIETNAMESE AMERASIANS	PL 100-461 TITLE II	VOL. I
REFUGEES (FOREIGN)		
INDOCHINESE REFUGEE RESETTLEMENT AND PROTECTION ACT OF 1987	PL 100-202 TITLE VIII	VOL. II
REFUGEES		
AFRICAN	PL 87-195 SEC 495F	VOL. I
CAMBODIAN	PL 99-93 SEC 809	VOL. II
CHILE	PL 93-189 SEC 35	VOL. I
CUBA	PL 96-533 SEC 715	VOL. I
PROCESSING FOR ADMISSION TO U.S.	PL 100-204 SEC 903	VOL. II
EL SALVADOR	PL 87-195 SEC 495I	VOL. I
	PL 97-113 SEC 731	VOL. I
HAITI	EO 12341	VOL. II
	PL 96-422 SEC 501	VOL. II
HAITI 413	PL 97-113 SEC 721	VOL. I
ILLEGAL ALIENS		
INTERDICTION OF	EO 12324	VOL. II
INDOCHINESE		
RECOMMENDATIONS BY CONGRESS	PL 100-204 SEC 904	VOL. II
INTERNATIONAL RESETTLEMENT		
COOPERATION FROM COUNTRIES RECEIVING FOREIGN AID	PL 100-461 SEC 540	VOL. I
SOUTHAST ASIA		
PIRACY IN GULF OF THAILAND	PL 98-164 SEC 110	VOL. II
SOUTHEAST ASIAN		
ELIGIBILITY FOR U.S. REFUGEE PROGRAM	PL 100-204 SEC 906	VOL. II
THAILAND	PL 99-93 SEC 809	VOL. II
U.S.S.R.	PL 95-426 SEC 106	VOL. II
REGULATION OF WHALING, INTERNATIONAL CONVENTION FOR THE		
U.S. IMPLEMENTATION OF	PL 81-676 SEC 2	153
RELATING TO THE IMPLEMENTATION OF THE CONVENTION ON THE CIVIL ASPECTS OF		
INTERNATIONAL CHILD ABDUCT	EO 12648	VOL. II
RELIGIOUS FREEDOM	PL 88-633 SEC 501	VOL. I
PENTECOSTAL CHRISTIAN		
COMMUNITY OF CHUGUYEVKA	PL 99-93 SEC 805	VOL. II
RELIGIOUS FREEDOM IN THE		
UKRAINE, U.S.S.R.	PL 100-305	621
REORGANIZATION PLAN NO. 2 OF 1977		
EFFECTIVE DATE	EO 12048 SEC 1	VOL. II
REORGANIZATION PLAN NO. 2 OF 1979	RP NO. 2	VOL. I
REPATRIATION LOAN PROGRAM		
REQUIREMENTS OF	PL 84-885 SEC 4(D)	VOL. II
REPORTS TO CONGRESS		
ABM TREATY ABSENCE		
EFFECT ON STRATEGIC OFFENSIVE AND DEFENSIVE PROGRAMS	PL 100-180 SEC 233	VOL. I
ACDA	PL 87-297 SEC 47	VOL. II
CLASSIFIED INFORMATION		
SECURITY	PL 100-213 SEC 6	VOL. II
INSPECTOR GENERAL	PL 87-297 SEC 53	VOL. II
ACDA BUDGET	PL 87-297 SEC 49(D)	VOL. II

			PAGE
REPORTS TO CONGRESS--CONTINUED			
ADB	PL 89-369	SEC 11(B)	VOL. III
	PL 89-369	SEC 4	VOL. III
ADVISORY PANEL ON OVERSEAS SECURITY	PL 99-399	SEC 407	VOL. II
ADVISORY PANEL ON SECURITY OF U.S. MISSIONS ABROAD	PL 98-533	SEC 301	VOL. II
AEC	PL 83-703	SEC 251	298
AFRICA-U.S. RELATIONS			
ARMS SALES	PL 90-629	SEC 33	VOL. I
AFRICAN DEVELOPMENT FOUNDATION	PL 95-424	SEC 122	VOL. I
AGRICULTURAL COMMODITIES			
EXPORT PROMOTION	PL 95-501	SEC 602	VOL. I
AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 408	VOL. I
EXCESS OF FOREIGN CURRENCIES	PL 83-480	SEC 104(4)	VOL. I
FOREIGN CURRENCY USES	PL 83-480	SEC 104(3)	VOL. I
REVOLVING FUND	PL 89-808	SEC 4(D)	VOL. I
AGRICULTURAL SALES	PL 95-501	SEC 603	VOL. I
AID FOR LATIN AMERICA AND THE CARIBBEAN	PL 99-83	SEC 709	VOL. I
ALASKAN PIPELINE	PL 93-153	SEC 301	345
ANGLO-IRISH AGREEMENT			
U.S. CONTRIBUTIONS IN SUPPORT OF	PL 99-415	SEC 6	VOL. I
ANTITERRORISM PROGRAM	PL 87-195	SEC 574	VOL. I
APARTHEID			
ENDING IN SOUTH AFRICA	PL 99-440	TITLE V	VOL. III
ARMED FORCES, INTRODUCTION INTO HOSTILITIES	PL 93-148	SEC 3	VOL. II
ARMS			
LEASING OF	PL 90-629	SEC 62	VOL. I
ARMS CONTROL			
MILITARY CONSEQUENCES OF	PL 100-180	SEC 905	VOL. II
ON-SITE INSPECTIONS	PL 100-456	SEC 909	VOL. II
SOVIET UNION COMPLIANCE	PL 100-180	SEC 903	VOL. II
	PL 100-456	SEC 907	VOL. II
U.S. COMPLIANCE WITH	PL 87-297	SEC 52	VOL. II
U.S. POSITION	PL 100-180	SEC 906	VOL. II
U.S. STRATEGY	PL 100-456	SEC 906	VOL. II
VERIFICATION POLICY COORDINATION	PL 100-456	SEC 910	VOL. II
ARMS SALES	PL 90-629	SEC 36	VOL. I
	PL 90-629	SEC 4	VOL. I
ARMS SALES (COMMERCIAL) AGENT FEES	PL 90-629	SEC 39	VOL. I
ARMS SALES			
ANNUAL ESTIMATE	PL 90-629	SEC 25	VOL. I
COMBAT READINESS, IMPACT ON	PL 90-629	SEC 21(I)	VOL. I
ILLEGAL PAYMENTS	PL 94-329	SEC 607	VOL. I
MILITARY DICTATORS	PL 90-629	SEC 1	VOL. I
QUARTERLY ESTIMATES	PL 90-629	SEC 28	VOL. I
TRANSFERS	PL 90-629	SEC 3(D)	VOL. I
ASIAN-PACIFIC REGIONAL HUMAN RIGHTS CONVENTION	PL 100-204	SEC 747	VOL. II
ATOMIC ENERGY	PL 95-242	SEC 103	317
AGREEMENTS FOR COOPERATION	PL 83-703	SEC 123(D)	271
COOPERATION WITH BERLIN	PL 83-703	SEC 125	273
SOURCE MATERIAL	PL 83-703	SEC 61	257
SPECIAL NUCLEAR MATERIAL	PL 83-703	SEC 58	256
BENEFICIARY DEVELOPING COUNTRY			
DESIGNATION OF	PL 93-618	SEC 502	VOL. III
BOARD FOR INTERNATIONAL BROADCASTING	PL 93-129	SEC 4	VOL. II
CIA	PL 87-195	SEC 662	VOL. I
CLASSIFICATION OF	PL 87-195	SEC 634B	VOL. I
COMMISSION ON SECURITY AND COOPERATION IN EUROPE	PL 94-304	SEC 6	VOL. II
COMPETITIVENESS POLICY COUNCIL	PL 100-418	SEC 5208	VOL. III
COUNTERVAILING DUTIES	PL 71-361	SEC 303	VOL. III
CUBAN TROOPS IN AFRICA	PL 95-426	SEC 613	VOL. II
CYPRUS	PL 87-195	SEC 620C	VOL. I
CZECHOSLOVAKIA-U.S. RELATIONS			
SETTLEMENT OF CLAIMS	PL 93-618	SEC 408	VOL. III
DEBT REDUCTION			
POOREST DEVELOPING COUNTRIES	PL 100-418	SEC 3123	VOL. III
DEEPWATER PORTS	PL 93-627	SEC 20	104

			PAGE
REPORTS TO CONGRESS--CONTINUED			
DEFENSE ARTICLES OR SERVICES TRANSFERS BY INTELLIGENCE AGENCIES	PL 99-569	SEC 602	VOL. I
DIPLOMATIC AND COUNSLAR SERVICE OBLIGATION OF FUNDS	PL 100-202	TITLE III	VOL. II
DIPLOMATIC IMMUNITY INSURANCE COVERAGE STUDY	PL 100-204	SEC 137	VOL. II
DISCRIMINATION AID SUSPENSION	PL 87-195	SEC 505(G)	VOL. I
ARMS SALES SUSPENSION	PL 90-629	SEC 5	VOL. I
DISPOSAL OF NAVAL VESSELS	PL 84-1028	SEC 7307	VOL. I
DOMESTIC TRAVEL RESTRICTIONS	PL 95-426	SEC 126	VOL. II
DRIFTNET FISHING EFFECTS OF	PL 100-220	SEC 4005	178
DRUG CONTROL PROGRESS BY FOREIGN COUNTRIES	PL 93-618	SEC 804	VOL. III
SUPPORT BY DEPARTMENT OF DEFENSE	PL 100-456	SEC 1107	VOL. I
DRUG CONTROL EFFORTS OF FOREIGN GOVERNMENTS	PL 93-618	SEC 802	VOL. III
DRUG TRADE	PL 93-618	SEC 606	VOL. III
DRUGS	PL 87-195	SEC 481	VOL. I
DUTIES, RATES OF	PL 93-618	SEC 125(E)	VOL. III
DUTY-FREE TREATMENT	PL 93-618	SEC 505	VOL. III
EAST-WEST CENTER	PL 86-472	SEC 704	VOL. II
EAST-WEST TRADE	PL 93-618	SEC 411	VOL. III
EAST-WEST TRADE STATISTICS MONITORING SYSTEMS	PL 93-618	SEC 410	VOL. III
EDUCATIONAL AND CULTURAL EXCHANGE	PL 87-256	SEC 104	VOL. II
	PL 87-256	SEC 107-108	VOL. II
EL SALVADOR	PL 97-113	SEC 729	VOL. I
ELIMINATION OF STRATEGIC BALLISTIC MISSILES	PL 100-180	SEC 905	VOL. II
EMERGENCY EXPENDITURES DIPLOMATIC AND CONSULAR SERVICE	PL 100-204	SEC 124	VOL. II
EMIGRATION, FREEDOM OF	PL 93-618	SEC 409	VOL. III
ENDANGERED PLANTS	PL 93-205	SEC 12	213
ENERGY INTERNATIONAL VOLUNTARY AGREEMENTS	PL 94-163	SEC 252(I)	355
ENERGY ACTIONS	PL 94-163	SEC 551	365
ENERGY SUPPLY INTERRUPTIONS	PL 97-229	SEC 6	374
EXPORT CONTROLS	PL 96-72	SEC 14	VOL. III
EXPORT TRADING COMPANIES	PL 100-418	SEC 2311	VOL. III
EXPORT-IMPORT BANK	PL 79-173	SEC 2(B)(1)	VOL. III
	PL 79-173	SEC 9	VOL. III
EXPORTS MILITARY TECHNOLOGY	PL 93-365	SEC 709	VOL. I
EXPOSITIONS U.S. PARTICIPATION IN	PL 91-269	SEC 2	VOL. II
FINANCIAL INSTITUTIONS (U.S.) FOREIGN TREATMENT OF	PL 100-418	SEC 3602	VOL. III
FOOD ASSISTANCE	PL 87-195	SEC 300	VOL. I
FOOD PRODUCTION ASSESSMENT	PL 83-480	SEC 408	VOL. I
FOOD SHORTAGE	PL 93-559	SEC 55	VOL. I
FOREIGN AGENTS REGISTRATION	PL 75-583	SEC 11	537
FOREIGN AID	PL 87-195	SEC 620(E)(1)	VOL. I
	PL 87-195	SEC 620(F)	VOL. I
CUT-OFFS FOR DEFAULTS	PL 87-195	SEC 620(U)	VOL. I
EXCESS FUNDING	PL 87-195	SEC 653(B)	VOL. I
INTERNATIONAL ORGANIZATIONS	PL 87-195	SEC 301	VOL. I
PRESIDENTIAL DISCRETION	PL 87-195	SEC 614	VOL. I
PRIOR NOTIFICATION FOR OBLIGATING FUNDS	PL 87-195	NOTE	VOL. I
TRANSFER OF FUNDS	PL 87-195	SEC 610(A)	VOL. I
TURKEY	PL 87-195	SEC 620(X)	VOL. I
WAIVER OF PROHIBITION	PL 87-195	SEC 620(Q)	VOL. I
FOREIGN CLAIMS	PL 81-455	SEC 3	451
FOREIGN CURRENCIES AVAILABILITY FOR CONGRESSIONAL USE	PL 83-665	SEC 502	431
FOREIGN CURRENCIES USES	PL 83-480	SEC 104(B)(1)	VOL. I
FOREIGN INVESTMENT IN U.S.	PL 93-479	SEC 10	VOL. III
FOREIGN MILITARY BUDGETS	PL 87-195	SEC 620(S)(2)	VOL. I
FOREIGN SERVICE COMPLIANCE WITH PRIOR AND FUTURE REQUESTS	PL 100-204	SEC 184	VOL. II

		PAGE
REPORTS TO CONGRESS--CONTINUED		
FOREIGN SERVICE BUILDINGS		
LEASES	PL 69-186 SEC 9(B)	VOL. II
SALES	PL 69-186 SEC 9(B)	VOL. II
GLOBAL CLIMATE PROTECTION	PL 100-204 SEC 1104	383
HARMONIZED TARIFF SCHEDULES		
OPERATION OF	PL 100-418 SEC 1216	VOL. III
HUMAN RIGHTS	PL 87-195 SEC 502B	VOL. I
HUMAN RIGHTS IN DEVELOPING		
COUNTRIES	PL 87-195 SEC 116(D)	VOL. I
HUMAN RIGHTS VIOLATIONS		
IN RECIPIENT SECURITY		
ASSISTANCE COUNTRIES	PL 87-195 SEC 502B	VOL. I
IADB		
U.S. PARTICIPATION IN	PL 86-147 SEC 4	VOL. III
IADB STRATEGY	PL 86-147 SEC 28(B)	VOL. III
IAEA	PL 85-177 SEC 3	307
IDA		
U.S. PARTICIPATION IN	PL 86-565 SEC 4	VOL. III
IFC		
U.S. PARTICIPATION IN	PL 84-350 SEC 4	VOL. III
IMF AND IBRD		
U.S. PARTICIPATION IN	PL 79-171 SEC 4(B)(5)	VOL. III
IMPORT OF FISH PRODUCTS	PL 83-680 SEC 8	186
IMPORT RELIEF	PL 93-618 SEC 203	VOL. III
IMPORT RESTRICTIONS		
CONTRARY TO NATIONAL		
INTERESTS	PL 93-618 SEC 122(B)	VOL. III
INTERNATIONAL AGREEMENTS	PL 92-403	VOL. II
LATE TRANSMITTAL	PL 92-403	VOL. II
INTERNATIONAL DEBT		
MANAGEMENT AUTHORITY		
ESTABLISHMENT OF	PL 100-418 SEC 3111(C)-(D)	VOL. III
INTERNATIONAL ECONOMIC		
POLICY		
EXCHANGE RATE	PL 100-418 SEC 3005	VOL. III
INTERNATIONAL TRADE		
COMMISSION	PL 93-618 SEC 608	VOL. III
INTERPARLIAMENTARY GROUPS	PL 86-42	441
	PL 86-420	444
INTERPARLIAMENTARY UNION		
AMERICAN GROUP	PL 74-170 SEC 2	438
INVESTMENT (INTERNATIONAL)	PL 94-472 SEC 4(A)	VOL. III
JAPAN-U.S. FRIENDSHIP		
COMMISSION	PL 94-118 SEC 5(B)	VOL. II
MARIHUANA	PL 87-195 SEC 481(D)	VOL. I
MARINE MAMMAL PROTECTION	PL 92-522 SEC 204	227
MIAS	H RES 94-335 SEC 5	VOL. II
MICRONESIAN CLAIMS	PL 92-39 SEC 104	504
MIDDLE EAST	PL 85-7 SEC 3	VOL. II
MILITARY (U.S.)	PL 93-365 SEC 302	VOL. I
MILITARY AID (U.S.)	PL 87-195 SEC 506(A)	VOL. I
ALLOCATION CHANGES	PL 87-195 SEC 653(A)	VOL. I
MILITARY AID		
MIDDLE EAST	PL 85-7 SEC 3	VOL. II
MILITARY EDUCATION AND		
TRAINING	PL 87-195 SEC 542	VOL. I
MISSILE TECHNOLOGY CONTROL		
REGIME		
MANPOWER REQUIREMENTS	PL 100-180 SEC 901	VOL. II
MOST-FAVORED-NATION		
TREATMENT	PL 93-618 SEC 407	VOL. III
MULTINATIONAL FORCE AND		
OBSERVERS		
REQUIREMENT DELEGATED	EO 12361	VOL. II
NATIONAL ACADEMY OF PEACE		
AND CONFLICT RESOLUTION	PL 95-561 SEC 1516	VOL. II
NATIONAL TRADE DATA BANK	PL 100-418 SEC 5413(B)	VOL. III
NATO		
ASSIGNMENT OF MISSIONS		
AMONG MEMBER		
COUNTRIES	PL 100-463 SEC 8125	VOL. I
DEFENSE PROGRAM FOR FY		
1990	PL 100-456 SEC 1005	VOL. I
DETERRENCE		
REQUIREMENTS	PL 100-180 SEC 1001	VOL. I
NICARAGUA-U.S. RELATIONS	PL 99-83 SEC 722(J)	VOL. I
NICARAGUAN RESISTANCE		
ASSISTANCE TO	PL 100-463 SEC 9004	VOL. I
NUCLEAR FACILITIES	PL 97-113 SEC 735	VOL. I
NUCLEAR WEAPONS DEVELOPMENT		
IMPACT OF	PL 87-297 SEC 36(B)(2)	VOL. II
NUCLEAR WINTER		
POLICY IMPLICATIONS	PL 99-145 SEC 1006	VOL. II
OPIC	PL 87-195 SEC 240A	VOL. I
OVERSEAS WORKLOAD PROGRAM	PL 100-180 SEC 1021	VOL. I
PANAMA CANAL COMMISSION	PL 100-203 SEC 5418	VOL. II
PANAMA-U.S. RELATIONS		
STATIONING OF U.S.		
MILITARY FORCES	PL 96-70 SEC 1111	VOL. II

		PAGE
REPORTS TO CONGRESS--CONTINUED		
PEACE CORPS	PL 87-293 SEC 11	VOL. I
PROHIBITED CORRUPT PRACTICES INTERNATIONAL AGREEMENT	PL 100-418 SEC 5003(D)(2)	VOL. III
PROTECTION OF FOREIGN VISITORS	PL 94-141 SEC 406	VOL. II
RECIPROCITY REGARDING U.S. MISSIONS ABROAD	PL 100-204 SEC 154	VOL. II
REFUGEE RELIEF	PL 87-510 SEC 2(C)	VOL. II
REFUGEES FROM CUBA AND HAITI	PL 97-241 SEC 502	VOL. II
SALE OF EXPORT-IMPORT BANK LOANS	PL 79-173 SEC 16(C)	VOL. III
SATELLITES NUCLEAR	PL 95-426 SEC 608	VOL. II
SCIENCE AND TECHNOLOGY	PL 95-426 SEC 503-504	VOL. II
SDAF	PL 90-629 SEC 53	VOL. I
SECRETARY OF DEFENSE MILITARY FORCE STRUCTURE	10 USC 113	VOL. I
SECRETARY OF STATE SOVIET NATIONALS SECONDED TO THE U.N.	PL 100-204 SEC 701	VOL. II
SECURITIES AND EXCHANGE COMMISSION	PL 86-147 SEC 11(B)	VOL. III
SECURITY ASSISTANCE SURVEYS	PL 90-629 SEC 26	VOL. I
SEIZURE OF U.S. FISHING VESSELS	PL 83-680 SEC 5(B)	184
	PL 83-680 SEC 8	186
SOVIET UNION-U.S. RELATIONS TRADE AGREEMENTS	PL 93-618 SEC 613	VOL. III
SOVIET UNION-U.S. SCIENTIFIC EXCHANGES	PL 97-241 SEC 126	VOL. II
SPECIAL NUCLEAR MATERIAL	PL 83-703 SEC 51	251
FOREIGN DISTRIBUTION OF	PL 83-703 SEC 54	251
STANDING CONSULTATIVE COMMISSION	PL 87-297 SEC 38	VOL. II
ARMS CONTROL COMPLIANCE	PL 100-213 SEC 3	VOL. II
START CONSEQUENCES OF	PL 100-456 SEC 908(B)	VOL. II
STOCK-PILING DEFENSE ARTICLES	PL 87-195 SEC 514(E)	VOL. I
STRATEGIC DEFENSE INITIATIVE	PL 100-180 SEC 231	VOL. I
	PL 100-456 SEC 222	VOL. I
DEVELOPMENT PLANS AND COSTS	PL 100-180 SEC 232	VOL. I
FY88 FUNDING ALLOCATION	PL 100-180 SEC 234	VOL. I
STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN	PL 97-229 SEC 6(B)	375
TERRORISM ANNUAL COUNTRY REPORT ON	PL 100-204 SEC 140	VOL. II
MEASURES TO PROTECT SHIP PASSENGERS AND CREWS	PL 99-399 SEC 903	VOL. II
TERRORISM-RELATED ASSISTANCE	PL 99-83 SEC 502	VOL. I
TIED AID CREDIT PROGRAM	PL 79-173 SEC 15(G)	VOL. III
TRADE AGREEMENTS	EO 11846 SEC 2(C)	VOL. III
	PL 93-618 SEC 102	VOL. III
NEGOTIATIONS	PL 93-618 SEC 161	VOL. III
RECIPROCAL TREATMENT	PL 93-618 SEC 126(C)	VOL. III
TRADE DISCRIMINATION	PL 95-426 SEC 606	VOL. II
TRADE INJURIES TARIFF READJUSTMENT	PL 87-794 SEC 351	VOL. III
TRADE POLICIES OF FOREIGN COUNTRIES	PL 100-418 SEC 2202	VOL. III
TRUST TERRITORY OF THE PACIFIC ISLANDS FISCAL CONDITIONS	PL 83-451 SEC 4	539
TURKEY-U.S. RELATIONS COMPLIANCE WITH FOREIGN ASSISTANCE	PL 87-195 SEC 620(X)	VOL. I
U.N. MEMBERSHIP	PL 79-264 SEC 4	VOL. II
U.S. ADVISORY COMMISSION ON INFORMATION	PL 80-402 SEC 603	VOL. II
U.S. EXPORTS TO DEVELOPING COUNTRIES	PL 100-418 SEC 3303	VOL. III
U.S. MISSIONS ABROAD FOREIGN NATIONAL EMPLOYEES	PL 100-204 SEC 154	VOL. II
U.S. PERSONNEL IN SINAI	PL 94-110 SEC 4	VOL. II
U.S. SCHOLARSHIP PROGRAM FOR DEVELOPING COUNTRIES	PL 99-93 SEC 611	VOL. II

			PAGE
REPORTS TO CONGRESS--CONTINUED			
WAR POWERS			
PRESIDENTIAL USE OF	PL 93-148	SEC 4-5	VOL. II
WORLD ALTERNATE ENERGY			
CONFERENCE	PL 95-426	SEC 609	VOL. II
	PL 93-189	SEC 39(A)(4)	VOL. I
WORLD FOOD SITUATION			
REPROGRAMMING OF FUNDS			
FOREIGN AID	PL 87-195	SEC 634A	VOL. I
STATE DEPARTMENT	PL 84-885	SEC 34	VOL. II
USIA	PL 80-402	SEC 705	VOL. II
REPUBLIC OF THE MARSHALL ISLANDS-U.S. RELATIONS			
COMPACT OF FREE ASSOCIATION			
IMPLEMENTING	51 FR 40399		VOL. III
RESEARCH			
(SEE SCIENCE AND TECHNOLOGY)			
RESTORATION OF A FREE AND INDEPENDENT CAMBODIA	PL 100-502		636
RFE			
(SEE RADIO FREE EUROPE AND RADIO LIBERTY)			
RHODESIA			
(SEE ZIMBABWE)			
U.S. SANCTIONS	PL 79-264	SEC 5(C)	VOL. II
RIO GRANDE POLLUTION CORRECTION ACT OF 1987	PL 100-465		388
RIO TREATY OF 1947			
U.S. POLICY TOWARD CUBA	PL 87-733		VOL. II
RIOT CONTROL			
RENOUNCEMENT OF	EO 11850		VOL. II
RL			
(SEE RADIO FREE EUROPE AND RADIO LIBERTY)			
ROMANIA-U.S. RELATIONS			
CLAIMS	PL 81-455	SEC 301-318	471
LIQUIDATION OF PROPERTY	PL 81-455	SEC 201-216	461
	PL 87-195	SEC 495D	VOL. I
FOREIGN AID	PL 100-204	SEC 1205	VOL. II
HUMAN RIGHTS VIOLATIONS	PL 87-195	SEC 239	VOL. I
OPIC			
RUBBER			
INTERNATIONAL ORGANIZATION U.S. PARTICIPATION	PL 96-271		VOL. III
RUMANIA			
(SEE ROMANIA-U.S. RELATIONS)			
RURAL DEVELOPMENT, AGRICULTURE, AND RELATED AGENCIES			
APPROPRIATIONS ACT, 1989	PL 100-460		VOL. I
RYUKYU CLAIMS SETTLEMENT ACT (SEE ALSO FOREIGN CLAIMS)	PL 89-296		499
S			
SABBATINO AMENDMENT			
ACT OF STATE DOCTRINE DENIED RECOGNITION	PL 87-195	SEC 620(E)(2)	VOL. I
SAHEL DEVELOPMENT PROGRAM			
IMPLEMENTATION	PL 87-195	SEC 121	VOL. I
PLANNING	PL 87-195	SEC 120	VOL. I
SAINT LAWRENCE SEAWAY			
TOLL NEGOTIATIONS U.S. ADVISORY BOARD	PL 95-105	SEC 110	VOL. II
SALMON			
NORTH ATLANTIC	PL 97-389	TITLE III	161
PACIFIC	PL 99-5		165
SAMANTHA SMITH MEMORIAL EXCHANGE PROGRAM	PL 87-256	SEC 112(A)(8)	VOL. II
SANCTIONS, ECONOMIC			
AGAINST SOUTH AFRICA	PL 99-440	TITLE III	VOL. III
SAPOA AGREEMENT			
ESF APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
VERIFICATION COMMISSION AID PAYMENTS IN SUPPORT OF	PL 100-276		VOL. I
SATELLITES			
NUCLEAR POWERED	PL 95-426	SEC 608	VOL. II
SAUDI ARABIA			
F-15 AIRCRAFT TRANSFER TO	PL 100-456	SEC 1306	VOL. I
SAUDI ARABIA-U.S. RELATIONS			
ARMS SALES AWACS	PL 99-83	SEC 131	VOL. I
SCHOLARSHIPS			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
SCIENCE AND TECHNOLOGY			

			PAGE
SCIENCE AND TECHNOLOGY--CONTINUED			
(SEE ALSO TECHNICAL ASSISTANCE)			
AGREEMENTS, 1982-83	PL 97-241	SEC 110	VOL. II
BILATERAL AGREEMENTS			
AUTHORIZATION OF APPROPRIATIONS, 1986-87	PL 99-93	SEC 101(5)	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1988-89	PL 100-204	SEC 105	VOL. II
DESALTING PLANT	PL 87-195	SEC 219	VOL. I
ENDANGERED SPECIES			
WHALES	PL 81-676	SEC 11	157
FISHERIES			
TUNA	PL 81-764	SEC 11	123
FOREIGN CURRENCIES FROM AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 104(B)(3)	VOL. I
FOREIGN POLICY	PL 95-426	SEC 501-504	VOL. II
INTERNATIONAL COOPERATION			
NATIONAL SCIENCE FOUNDATION	PL 81-507	SEC 13	408
MIDDLE EAST			
COOPERATIVE	PL 99-83	SEC 202	VOL. I
UN CONFERENCE ON	PL 95-426	SEC 103	VOL. II
SCIENTIFIC AND TECHNOLOGICAL COOPERATION, INSTITUTE FOR	PL 96-53	SEC 401	VOL. I
SCIENTIFIC EXCHANGE			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
SCUBA EQUIPMENT			
IRAN			
SHIPMENT PROHIBITION	52 FR 36749		VOL. III
SDAF			
ESTABLISHED	PL 90-629	SEC 51	VOL. I
LIMITATION, 1989	PL 100-461	TITLE III	VOL. I
REPORT TO CONGRESS	PL 90-629	SEC 53	VOL. I
SIZE OF	PL 97-113	SEC 108(B)	VOL. I
USE OF ITEMS	PL 90-629	SEC 52	VOL. I
SDRS			
(SEE SPECIAL DRAWING RIGHTS)			
SEA LAW			
(SEE ALSO ENDANGERED SPECIES)			
COLLISIONS			
OIL POLLUTION	PL 93-248	SEC 3	95
DEEP SEABED MINERALS	PL 96-283		47
INTERNATIONAL AGREEMENT	PL 96-283	TITLE II	71
MARINE POLLUTION	PL 96-478		84
MILITARY TRAINING OPERATIONS	PL 93-365	SEC 704	VOL. I
OIL POLLUTION			
DAMAGES CAUSED BY	PL 93-248	SEC 3-12	95
SEALS			
(SEE ENDANGERED SPECIES)			
SEASPARROW COOPERATIVE PROGRAM	PL 98-525	SEC 1004	VOL. I
SEATO			
PROTOCOL TO	PL 88-408		VOL. II
TONKIN GULF RESOLUTION	PL 88-408		VOL. II
SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION			
USING U.S. CONTRIBUTION TO U.N.	PL 98-164	SEC 114(A)(5)	VOL. II
SECONDARY SCHOOLS			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
SECRET SERVICE			
PROTECTION OF FOREIGN DIPLOMATS	PL 97-418		VOL. II
SECURITIES AND EXCHANGE COMMISSION			
REPORTS	PL 89-369	SEC 11	VOL. III
ANNUAL	PL 86-147	SEC 11	VOL. III
SECURITY			
(SEE MUTUAL DEFENSE)			
SECURITY AND COOPERATION IN EUROPE, COMMISSION ON			
APPROPRIATION AUTHORIZATION	PL 94-304	SEC 7	VOL. II
APPROPRIATIONS, 1989	PL 100-459	TITLE V	VOL. II
MEMBERSHIP	PL 94-304	SEC 3	VOL. II
POWERS	PL 94-304	SEC 4	VOL. II
REPORTS FROM PRESIDENT	PL 94-304	SEC 5	VOL. II
REPORTS TO CONGRESS	PL 94-304	SEC 6	VOL. II
RESPONSIBILITIES	PL 94-304	SEC 2	VOL. II
SECURITY AND COOPERATION IN EUROPE, CONFERENCE ON	PL 95-105	SEC 502	VOL. II

		PAGE
SECURITY ASSISTANCE (U.S.) SEE (MILITARY AID (U.S.))		
SECURITY ASSISTANCE PROGRAM		
1990 CONGRESSIONAL PRESENTATION		
APPROPRIATIONS RECESSION	PL 100-461 SEC 575	VOL. I
SECURITY ASSISTANCE SURVEYS	PL 90-629 SEC 26	VOL. I
SECURITY INVESTIGATIONS (SEE LOYALTY)		
SECURITY OF UNITED STATES MISSIONS ABROAD, ADVISORY PANEL ON		
REPORT TO CONGRESS	PL 98-533 SEC 301	VOL. II
SECURITY SUPPORTING ASSISTANCE SEE (ECONOMIC SUPPORT FUND)		
SELECTION-OUT (SEE FOREIGN SERVICE)		
SENATE		
GIFTS (FOREIGN)	PL 95-105 SEC 515(A)(1)	VOL. II
SEPARATION OF POWERS		
WAR POWERS	PL 93-148 SEC 2	VOL. II
SHAPIRO, LEE		
PRESIDENTIAL MEDAL OF FREEDOM	PL 100-463 SEC 8144	VOL. I
SHIPS		
POLLUTION	PL 96-478	84
TERRORISM		
PROTECTING PASSENGERS AND CREWS	PL 99-399 SEC 902	VOL. II
SILVER		
DISPOSAL OF	PL 96-175 SEC 3	VOL. III
SINAI FIELD MISSION		
FACILITIES TRANSFER TO EGYPT	PL 96-35 SEC 6	VOL. I
SMALL BUSINESS ADMINISTRATION		
PROCUREMENT FOR AID	PL 94-329 SEC 602	VOL. I
SMITHSONIAN INSTITUTION		
SECRETARY OF THE ENDANGERED PLANTS	PL 93-205 SEC 12	213
SOCIAL DEVELOPMENT		
(SEE ALLIANCE FOR PROGRESS)		
(SEE HUMAN RIGHTS)		
(SEE U.N.)		
SOCIAL SECURITY (U.S.)		
INTERNATIONAL ORGANIZATIONS	PL 79-291 SEC 5	VOL. II
SOCKEYE SALMON (SEE FISHERIES, SALMON)		
SOMALIA		
FOREIGN AID		
NOTIFICATION REQUIREMENTS	PL 100-461 SEC 543	VOL. I
SOUTH AFRICA		
APARTHEID		
POLICIES TO END	PL 99-93 SEC 211(C)	VOL. II
ESF		
SCHOLARSHIPS FOR THE DISADVANTAGED	PL 100-461 SEC 576	VOL. I
TRADE		
PROHIBITIONS ON	PL 99-440 TITLE III	VOL. III
SOUTH AFRICA-U.S. RELATIONS		
ANTI-APARTHEID MEASURES		
ENFORCEMENT AND ADMINISTRATIVE PROCEDURES	PL 99-440 TITLE VI	VOL. III
APARTHEID		
U.S. POLICY TOWARD ENDING	PL 99-440 TITLE I	VOL. III
CHILDREN		
DETENTION OF	PL 100-204 SEC 1224	VOL. II
DISADVANTAGED SOUTH AFRICANS		
FOREIGN AID	PL 87-195 SEC 117	VOL. I
EXPORT-IMPORT BANK	PL 79-173 SEC 2(B)(9)	VOL. III
FORCED RELOCATIONS		
U.S. POLICY TOWARD	PL 99-83 SEC 803	VOL. I
FUTURE U.S. POLICY TOWARD	PL 99-440 TITLE V	VOL. III
INTELLIGENCE AGENCY COOPERATION		
RESTRICTIONS ON	PL 99-569 SEC 107	543
INTELLIGENCE SHARING		
RESTRICTIONS ON	PL 99-569 SEC 107	543
KRUGERRAND		
IMPORT PROHIBITION	EO 12535	VOL. III
LABOR PRACTICES OF U.S. GOVERNMENT	PL 99-440 TITLE II	VOL. III
NUCLEAR MATERIALS		
EXPORT OF	PL 98-164 SEC 1007	VOL. II
PROHIBITIONS ON IMPORTS AND EXPORTS	PL 99-440 TITLE III	VOL. III

			PAGE
SOUTH AFRICA-U.S. RELATIONS--CONTINUED			
REPORTS TO CONGRESS	PL 99-440	TITLE V	VOL. III
TRADE AND TRANSACTIONS PROHIBITED	EO 12532		VOL. III
SOUTH AFRICAN NONGOVERNMENTAL ORGANIZATIONS			
HUMAN RIGHTS FOREIGN AID GRANTS	PL 87-195	SEC 116(E)(2)	VOL. I
SOUTH PACIFIC TUNA ACT OF 1988-	PL 100-330		142
AUTHORIZATION OF APPROPRIATIONS	PL 100-330	SEC 20	152
SOUTH VIETNAM-U.S. RELATIONS (SEE ALSO INDOCHINA WAR)			
SOUTH YEMEN-U.S. RELATIONS			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
SOUTHEAST ASIA (SEE ALSO INDIVIDUAL COUNTRIES) (SEE ALSO INDOCHINA WAR)			
ADB EMPHASIS	PL 89-369	SEC 13	VOL. III
REFUGEES ELIGIBILITY FOR U.S. REFUGEE PROGRAM	PL 100-204	SEC 906	VOL. II
SOUTHERN AFRICA			
DEVELOPMENT ASSISTANCE APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
ECONOMIC SUPPORT FUND	PL 99-83	SEC 802	VOL. I
U.S. POLICY TOWARD	PL 99-440	TITLE I	VOL. III
SOUTHERN RHODESIA (SEE ZIMBABWE)			
SOVEREIGNTY (SEE ALSO COURTS, JURISDICTION) (SEE COURTS, JURISDICTION) (SEE SEA LAW)			
SOVIET JEWRY			
APPEAL FOR THE RELEASE OF	PL 99-81		612
SOVIET MISSION			
U.N. NUMBER OF EMPLOYEES	PL 99-569	SEC 702	VOL. II
SOVIET UNION			
BERLIN ACCESS TO	H CON RES 87-570		VOL. II
NEW CHANCERY BUILDING PROHIBITION ON OCCUPATION	PL 100-202	TITLE III	VOL. II
PENTECOSTAL CHRISTIAN COMMUNITY OF CHUGUYEVKA PERSECUTION	PL 99-93	SEC 805	VOL. II
RESEARCH ON	PL 98-164	SEC 801	VOL. II
U.N. FINANCIAL OBLIGATIONS	PL 97-113	SEC 717	VOL. I
SOVIET UNION-U.S. RELATIONS	PL 95-384	SEC 24	VOL. I
AFGHANISTAN OCCUPATION	PL 100-204	SEC 1241	VOL. II
ANGOLA U.S. POLICY ON	PL 100-204	SEC 1222	VOL. II
ANTIBALLISTIC MISSILE CAPABILITY REPORT TO CONGRESS	PL 100-456	SEC 907	VOL. II
ARMS CONTROL LIMITING CONVENTIONAL ARMS TRANSFERS	PL 99-83	SEC 129	VOL. I
BALTIC STATES SELF DETERMINATION OF	PL 100-204	SEC 1206	VOL. II
BIOLOGICAL AND CHEMICAL WEAPONS	PL 97-113	SEC 716	VOL. I
CHRISTIANS RELIGIOUS PERSECUTION OF	PL 100-204	SEC 1204	VOL. II
CLAIMS	PL 81-455	SEC 301-318	471
COOPERATION IN SPACE	PL 98-562		416
DIPLOMATIC AND CONSULAR PERSONNEL EQUIVALENCY IN NUMBERS	PL 99-93	SEC 813	VOL. II
DIRECT COMMUNICATIONS LINK	PL 99-85		VOL. I
EDUCATIONAL AND CULTURAL EXCHANGE FASCELL FELLOWSHIP PROGRAM	PL 99-399	TITLE X	VOL. II
EMBASSY MATTERS RECIPROCITY	PL 100-204	SEC 152	VOL. II
EXPORT-IMPORT BANK	PL 79-173	SEC 2(B)	VOL. III
FISHERY AGREEMENTS	PL 100-629		45
GLOBAL CLIMATE PROTECTION	PL 100-204	SEC 1106	384
GRAIN EXPORTS PROHIBITED COMMODITY CREDIT CORPORATION PURCHASES	PL 96-494	SEC 206	VOL. I
INTERNATIONAL MAIL TO NONDELIVERY OF	PL 100-204	SEC 1203	VOL. II
LITVINOV ASSIGNMENT	PL 81-455	SEC 301	471

		PAGE
SOVIET UNION-U.S. RELATIONS--CONTINUED		
MILITARY AND CIVILIAN EXCHANGE PROGRAM	PL 99-145 SEC 1005	VOL. II
MISSILE TESTS NEAR HAWAII SENSE OF CONGRESS	PL 100-204 SEC 1201	VOL. II
MOUNT ALTO EMBASSY SITE ELECTRONIC ESPIONAGE CAPABILITY	PL 100-178 SEC 901	VOL. II
	PL 100-180 SEC 1122	VOL. II
PROHIBITION ON USE OF	PL 100-204 TITLE I	VOL. II
MURDER OF LT. COLONEL ARTHUR D. NICHOLSON, JR.	PL 99-661 SEC 1368	VOL. I
MURDER OF MAJOR ARTHUR D. NICHOLSON, JR.	PL 99-93 SEC 148	VOL. II
NUCLEAR WINTER JOINT STUDY ON CONSEQUENCES OF	PL 99-93 SEC 708	VOL. II
OLYMPIC GAMES BOYCOTT	PL 96-533 SEC 718	VOL. I
OUTER SPACE COOPERATIVE VENTURES	PL 98-562	416
RELEASE OF SOVIET JEWRY	PL 99-81	612
RELIGIOUS PERSECUTION RFE/RL BROADCASTS ON	PL 98-164 SEC 306	VOL. II
RFE/RL JAMMING POLICY ON	PL 98-164 SEC 308	VOL. II
SCIENTIFIC EXCHANGES RISK FOR U.S.	PL 97-241 SEC 126	VOL. II
SOVIET AND COMMUNIST DISINFORMATION	PL 99-93 SEC 147	VOL. II
TRADE U.S. EXPORTS	PL 93-618 SEC 613	VOL. III
WALLENBERG AND KAPLAN	PL 98-164 SEC 1006	VOL. II
SOVIET UNION-U.S. RELATIONS SPOUSE AND FIANCE EMIGRATION	PL 100-222	613
SOVIET-EAST EUROPEAN RESEARCH AND TRAINING APPROPRIATIONS, 1989	PL 100-459 TITLE III	VOL. II
AUTHORIZATION OF APPROPRIATIONS	PL 99-93 SEC 101(6)	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1988-89	PL 100-204 SEC 105	VOL. II
SOVIET-EASTERN EUROPEAN RESEARCH AND TRAINING ACT OF 1983	PL 98-164 SEC 801	VOL. II
SOVIET-EASTERN EUROPEAN STUDIES ADVISORY COMMITTEE ESTABLISHED	PL 98-164 SEC 804	VOL. II
SPACE (SEE OUTER SPACE)		
SPACE DEFENSE SYSTEM TESTING MORATORIUM ON	PL 100-180 SEC 208	VOL. I
SPAIN-U.S. RELATIONS FISHERIES	PL 97-389 TITLE IV	40
PAINTING RETURN	PL 95-426 SEC 605	VOL. II
SPECIAL DEFENSE ACQUISITION FUND (SEE SDAF)		
SPECIAL DRAWING ACCOUNT U.S. PARTICIPATION IN	PL 90-349 SEC 2	VOL. III
SPECIAL DRAWING RIGHTS ALLOCATION OF CONGRESSIONAL CONSULTATION	PL 90-349 SEC 5(8)	VOL. III
EXCHANGE STABILIZATION FUND	PL 90-349 SEC 3-5	VOL. III
LIMITED PURPOSE FOR POOREST INDEBTED COUNTRIES STUDY OF	PL 100-418 SEC 3123	VOL. III
SPECIAL DRAWING RIGHTS ACT	PL 90-349	VOL. III
SPECIAL FACILITY FOR SUB-SAHARAN AFRICA	PL 86-565 SEC 19	VOL. III
CONGRESSIONAL FINDINGS	HR 2253 SEC 101	VOL. III
IDA	PL 86-565 SEC 19	VOL. III
SPECIAL FOREIGN ASSISTANCE ACT OF 1971	PL 91-652	VOL. I
SPECIAL FOREIGN ASSISTANCE ACT OF 1986	PL 99-529	VOL. I
SPECIAL INTERNATIONAL SECURITY ASSISTANCE ACT OF 1979	PL 96-35	VOL. I
SRI LANKA-U.S. RELATIONS POLITICAL SETTLEMENT OF INTERNAL DIFFERENCES	PL 99-83 SEC 907	VOL. I
STANDING CONSULTATIVE COMMISSION ARMS CONTROL COMPLIANCE REPORT TO CONGRESS	PL 100-213 SEC 3	VOL. II
REPORT TO CONGRESS	PL 87-297 SEC 38	VOL. II
STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956	PL 84-885	VOL. II

			PAGE
STATE DEPARTMENT/USIA AUTHORIZATION ACT, FISCAL YEAR 1975	PL 93-475		VOL. II
STATE, DEPARTMENT OF (SEE ALSO FOREIGN SERVICE) (SEE ALSO STATE, SECRETARY OF)			
ADMINISTRATIVE SERVICES CAPITAL FUND	PL 84-885	SEC 13	VOL. II
ADVISORY PANEL ON OVERSEAS SECURITY REPORT TO CONGRESS	PL 99-399	SEC 407	VOL. II
AID (SEE AID)			
AMBASSADORS AND MINISTERS (SEE AMBASSADORS)			
APPROPRIATIONS, 1989	PL 100-459	TITLE III	VOL. II
ASSISTANT SECRETARIES NUMBER OF	PL 99-93	SEC 115	VOL. II
ATOMIC ENERGY RESTRICTED DATA TRANSMISSION	EO 11057		310
AUTHORIZATION OF APPROPRIATIONS, 1973	PL 93-126		VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1975	PL 93-475		VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1977	PL 94-350	SEC 101	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1978	PL 95-105	SEC 101	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1979	PL 95-426	SEC 101	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1980-81	PL 96-60	SEC 102	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1982-83	PL 97-241	SEC 102	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1984-1985	PL 98-164	SEC 102	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1986-87	PL 99-93	SEC 101	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1988-89	PL 100-204	SEC 101	VOL. II
BUILDINGS ABROAD (SEE FOREIGN SERVICE BUILDINGS)			
BUREAU OF CONSULAR AFFAIRS	PL 82-414	SEC 104(B)	VOL. II
BUREAU OF DIPLOMATIC SECURITY	PL 99-399	SEC 104	VOL. II
BUREAU OF INTERNATIONAL EXPOSITIONS	PL 91-269	SEC 2-3	VOL. II
BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS	PL 93-126	SEC 9	VOL. II
BUREAU TO REVIEW RAW AND PROCESSED MATERIALS	PL 93-475	SEC 14	VOL. II
CLAIMS	PL 84-885	SEC 2	VOL. II
COMMUNICATIONS CENTER ALTERNATIVE SITE	PL 98-164	SEC 105	VOL. II
CONGRESSIONAL OVERSIGHT	PL 92-226	SEC 407	VOL. I
CONSULAR FACILITIES IN MEXICO IMPROVEMENT OF	PL 98-164	SEC 103	VOL. II
CONTRACT NEGOTIATION DISCRIMINATION	PL 94-350	SEC 121	VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE (SEE ALSO EDUCATIONAL AND CULTURAL			
EMERGENCY EXPENDITURES	PL 84-885	SEC 4	VOL. II
ENVIRONMENTAL AFFAIRS	EO 11742		337
FOREIGN AGENTS REGISTRATION CERTIFYING EXEMPTIONS	PL 75-583	SEC 3	531
FOREIGN AID FUNCTIONS DELEGATED TO	45 FR 11655		VOL. I
FOREIGN AID PROGRAM ADMINISTRATION OF	EO 12163	SEC 1-201	VOL. I
FOREIGN MISSION DECLARATION PROHIBITION AGAINST	PL 100-204	SEC 133	VOL. II
FOREIGN MISSIONS OFFICE OF	PL 84-885	SEC 203	VOL. II
FOREIGN SERVICE (SEE FOREIGN SERVICE)			
INSPECTOR GENERAL	PL 95-452		582
	EO 12066		VOL. I
	PL 99-93	SEC 150	VOL. II
EMERGENCY EXPENDITURES AUDIT	PL 84-885	SEC 4(C)	VOL. II
ESTABLISHMENT OF	PL 99-399	SEC 413	VOL. II

		PAGE
STATE, DEPARTMENT OF--CONTINUED		
INTELLIGENCE RESPONSIBILITIES	EO 12333 SEC 1.9	VOL. II
INTERNATIONAL COMMUNICATION AND INFORMATION OFFICE OF	PL 84-885 SEC 35	VOL. II
INTERNATIONAL COMMUNICATIONS POLICY ADDITIONAL POSITIONS FOR	PL 98-164 SEC 104	VOL. II
INTERNATIONAL NARCOTICS CONTROL APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
OFFICE OF REFUGEE PROGRAMS APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
ORGANIZATION	PL 81-73 SEC 1-2	VOL. II
PERSONNEL	PL 81-73 SEC 1-2	VOL. II
ADDITIONAL POSITIONS	PL 98-164 SEC 104	VOL. II
ASSIGNMENT TO EXECUTIVE AGENCIES	PL 93-126 SEC 11	VOL. II
ASSIGNMENT TO INTER-AMERICAN FOUNDATION	PL 91-175 SEC 401	VOL. I
CONSERVATION PROGRAMS ABROAD	PL 93-205 SEC 8	199
LEGAL ADVISERS	PL 81-73 SEC 2	VOL. II
TRAVEL EXPENSES	PL 84-885 SEC 10	VOL. II
PERSONNEL COSTS AND CURRENCY FLUCTUATIONS ADDITIONAL APPROPRIATIONS	PL 84-885 SEC 24	VOL. II
POLITICAL AND ECONOMIC REPORTING ADDITIONAL POSITIONS FOR	PL 98-164 SEC 104	VOL. II
PROCUREMENT CONTRACTS	PL 84-885 SEC 14	VOL. II
PROTECTION OF FOREIGN VISITORS	PL 94-141 SEC 406	VOL. II
PUBLICATIONS ON FOREIGN RELATIONS	PL 98-164 SEC 133	VOL. II
REFUGEES (SEE REFUGEES AND REFUGEE RELIEF)		
REPATRIATION LOAN PROGRAM REQUIREMENTS OF	PL 84-885 SEC 4(D)	VOL. II
REPROGRAMMING OF FUNDS	PL 84-885 SEC 34	VOL. II
SECURITY CAPITAL PROJECTS AND IMPROVEMENTS	PL 99-93 SEC 104	VOL. II
SECURITY OFFICERS EXTRA PAY	PL 84-885 SEC 32	VOL. II
SOVIET AND INTERNATIONAL COMMUNIST BEHAVIOR STUDY OF	PL 99-93 SEC 155	VOL. II
SPECIAL AGENTS GENERAL AUTHORITY	PL 84-885 SEC 37	VOL. II
TRANSFER OF FUNDS FROM	PL 84-885 SEC 8	VOL. II
U.S. PARTICIPATION IN UNITED NATIONS AUTHORIZATION OF APPROPRIATIONS	PL 79-264 SEC 8	VOL. II
UNDER SECRETARY FOR INTERNATIONAL NARCOTICS	PL 95-426 SEC 115	VOL. II
UNDER SECRETARY FOR MANAGEMENT	PL 81-73 SEC 1	VOL. II
USIA RELATIONS WITH	PL 80-402 SEC 1009	VOL. II
STATE, SECRETARY OF (SEE ALSO FOREIGN SERVICE) (SEE ALSO STATE, DEPARTMENT OF)		
ACCOUNTABILITY REVIEW BOARD	PL 99-399 SEC 302	VOL. II
ACDA DIRECTOR	PL 87-297 SEC 22	VOL. II
AGRICULTURAL COMMODITY SALES	PL 83-480 SEC 406	VOL. I
APPROVAL OF FOREIGN REPRESENTATIVES IN U.S.	PL 79-291 SEC 8-9	VOL. II
ARMS SALES	PL 90-629 SEC 2	VOL. I
DUTIES	EO 11958	VOL. I
AUTHORITY TO DELEGATE AND REGULATE	PL 96-465 SEC 205	VOL. II
BOARD FOR INTERNATIONAL BROADCASTING COOPERATION WITH	PL 93-129 SEC 6	VOL. II
BUILDINGS AUTHORITY OVER	PL 69-186 SEC 1	VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS AUTHORITY OVER	EO 11034 SEC 1	VOL. II

		PAGE
STATE, SECRETARY OF--CONTINUED		
INTERAGENCY COORDINATION	EO 11034 SEC 6	VOL. II
ENDANGERED SPECIES WHALES	PL 81-676 SEC 4	154
	PL 81-676 SEC 10	157
FISHERIES TUNA	PL 81-764 SEC 6	115
TUNA, ATLANTIC	PL 94-70 SEC 5	126
FISHERY AGREEMENTS	PL 94-265 SEC 202	20
FOREIGN AID FUNCTIONS RESERVED	45 FR 11655	VOL. I
FOREIGN AID ADMINISTRATION	PL 87-195 SEC 622	VOL. I
FOREIGN SERVICE	PL 81-73 SEC 3	VOL. II
GIFTS	PL 84-885 SEC 25	VOL. II
GIFTS (FOREIGN) APPROVAL FOR USE OF	PL 89-673	VOL. II
	PL 95-105 SEC 515(A)(1)	VOL. II
IMPORTING EDUCATIONAL AND CULTURAL MATERIALS	EO 12047	VOL. II
INTERNATIONAL AGREEMENTS	22 CFR 181.4	VOL. II
PRIOR CONSULTATION	PL 92-403	VOL. II
LIAISON WITH RFE/RL	PL 99-93 SEC 305	VOL. II
OFFICIAL RESIDENCE	PL 99-93 SEC 130	VOL. II
PASSPORTS	EO 11295	VOL. II
PL 480 ADMINISTRATION OF	EO 12220 SEC 1-3	VOL. I
PROTECTION OF FOREIGN MISSIONS TRANSFER OF REIMBURSEMENT AUTHORITY	EO 12478	VOL. II
REFUGEE RELIEF AUTHORITY OVER	EO 11077 SEC 1	VOL. II
REGULATIONS PROMULGATED	PL 81-73 SEC 4	VOL. II
SUCCESSION ORDER	EO 12343	VOL. II
TERRORISM-RELATED ASSISTANCE	PL 99-83 SEC 502	VOL. I
TERRORISM-RELATED SERVICES CONTROL OF	PL 84-885 SEC 40	VOL. II
TRADE AGREEMENTS PROGRAM	EO 11846 SEC 2(G)	VOL. III
TRANSMITTING INTERNATIONAL AGREEMENTS	PL 92-403	VOL. II
USIA	EO 10477 SEC 2-3	VOL. II
STATUTE OF LIMITATIONS NATIONALITY	65 STAT 107 SEC 3291	VOL. II
PASSPORTS	65 STAT 107 SEC 3291	VOL. II
STEEL IMPORT RESTRICTIONS	PL 93-618 SEC 607	VOL. III
U.S. INDUSTRY NATIONAL POLICY FOR	PL 98-573 SEC 803	VOL. III
STEEL IMPORT STABILIZATION ACT	PL 98-573 SEC 801	VOL. III
STOCK IN FINANCIAL INSTITUTIONS (SEE CAPITAL STOCK)		
STOCKPILE, NATIONAL DEFENSE DISPOSAL FROM	PL 96-175 SEC 3	VOL. III
STOCKPILING DEFENSE ARTICLES MILITARY AID	PL 87-195 SEC 514	VOL. I
STOCKPILING STRATEGIC MATERIALS AGRICULTURAL COMMODITIES	PL 85-931 SEC 7	VOL. I
STRATEGIC AND CRITICAL MATERIALS	PL 98-373 TITLE II	VOL. III
STRATEGIC AND CRITICAL MATERIALS TRANSACTION AUTHORIZATION ACT OF 1979	PL 96-175	VOL. III
STRATEGIC DEFENSE INITIATIVE ALLOCATION OF FUNDS REPORT TO CONGRESS	PL 100-456 SEC 222	VOL. I
ANTI-TACTICAL BALLISTIC MISSILE SYSTEM	PL 99-661 SEC 212	VOL. I
AUTHORIZATION OF APPROPRIATIONS, FY 1988	PL 100-180 SEC 221	VOL. I
AUTHORIZATION OF APPROPRIATIONS, FY 1989	PL 100-456 SEC 221	VOL. I
AUTHORIZATION OF APPROPRIATIONS, 1986	PL 99-145 SEC 221	VOL. I
CONDITIONS FOR DEPLOYMENT	PL 99-145 SEC 222	VOL. I
CONSULTATION WITH NATO ALLIES	PL 99-145 SEC 224	VOL. I
CONTRACTS WITH FOREIGN ENTITIES RESTRICTIONS ON	PL 100-180 SEC 222	VOL. I
DEVELOPMENT PLANS AND COSTS REPORT TO CONGRESS	PL 100-180 SEC 232	VOL. I
EFFECT ON ABM TREATY SENSE OF CONGRESS	PL 99-145 SEC 225	VOL. I
EFFECT ON COMPLIANCE WITH ABM TREATY	PL 99-661 SEC 216	VOL. I
ESTABLISHING A FEDERALLY		

		PAGE
STRATEGIC DEFENSE INITIATIVE—CONTINUED		
FUNDED R&D CENTER LIMITATION ON	PL 99-661 SEC 213	VOL. I
FY87 FUNDING LEVEL	PL 99-661 SEC 211	VOL. I
FY88 FUNDING ALLOCATION REPORT TO CONGRESS	PL 100-180 SEC 234	VOL. I
NATO COOPERATION AND CONSULTATION CONGRESSIONAL POLICY	PL 99-145 SEC 224	VOL. I
PROJECTED COST REPORT TO CONGRESS	PL 99-145 SEC 223(B)	VOL. I
REPORT TO CONGRESS	PL 100-180 SEC 231	VOL. I
REPORTS TO CONGRESS	PL 99-145 SEC 222	VOL. I
SUPPORT BY FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER	PL 100-180 SEC 227	VOL. I
TECHNOLOGY TRANSFER TO SOVIET UNION RESTRICTIONS ON	PL 100-180 SEC 223	VOL. I
USE AS LEVERAGE SENSE OF CONGRESS	PL 100-463 SEC 8123	VOL. I
STRATEGIC MATERIALS EXCHANGED FOR AGRICULTURAL COMMODITIES	PL 81-439 SEC 416(D) PL 83-480 SEC 310	VOL. I VOL. I
STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN	PL 97-229 SEC 6(B)	375
SUBSCRIPTIONS IN FINANCIAL INSTITUTIONS (SEE CAPITAL STOCK)		
SUDAN-U.S. RELATIONS ARMS SALES CREDITS REPAYMENT	PL 96-92 SEC 17(B)	VOL. I
FOREIGN AID CONDITIONS FOR	PL 99-83 SEC 806	VOL. I
NOTIFICATION REQUIREMENTS	PL 100-461 SEC 543	VOL. I
MILITARY AID	PL 96-53 SEC 502	VOL. I
SUGAR CUBAN QUOTA	PL 87-195 SEC 620(A)	VOL. I
IMPORTS FROM COMMUNIST COUNTRIES IN CARIBBEAN AND CENTRAL AMERICA	PL 98-67 SEC 231	VOL. III
INTERNATIONAL AGREEMENT IMPLEMENTATION OF	EO 12224 PL 96-236	VOL. III VOL. III
PANAMA QUOTA ELIMINATION OF	PL 100-461 SEC 565	VOL. I
SUPPORTING ASSISTANCE (SEE ECONOMIC SUPPORT FUND)		
SWAPO USE OF U.S.CONTRIBUTION TO U.N.	PL 98-164 SEC 114(B)	VOL. II
SWINE INFLUENZA INTERNATIONAL COOPERATION SENSE OF CONGRESS	PL 94-302 TITLE III	VOL. I
SYRIA-U.S. RELATIONS AID DEOBLIGATION	PL 98-151 SEC 101(B)(1) PL 98-164 SEC 1004	VOL. I VOL. II
AID PROHIBITION	PL 100-461 SEC 550	VOL. I
T		
TAIWAN ADB MEMBERSHIP	PL 89-369 SEC 25 PL 89-369 SEC 27(C)	VOL. III VOL. III
DEMOCRATIZATION OF	PL 99-93 SEC 806	VOL. II
IMF MEMBERSHIP	PL 79-171 SEC 36	VOL. III
TAIWAN RELATIONS ACT	PL 96-8	VOL. II
AUTHORIZATION OF APPROPRIATIONS	PL 96-8 SEC 16	VOL. II
CONGRESSIONAL OVERSIGHT	PL 96-8 SEC 14	VOL. II
RULES AND REGULATIONS GOVERNING	PL 96-8 SEC 13	VOL. II
TAIWAN-U.S. RELATIONS	EO 12143	VOL. II
AMERICAN INSTITUTE OF TAIWAN	PL 96-8 SEC 6	VOL. II
DEFENSE TREATY	PL 95-384 SEC 26	VOL. I
DEMOCRATIZATION	PL 100-204 SEC 1246	VOL. II
IMMIGRANT VISAS	PL 97-113 SEC 714	VOL. I
INTERNATIONAL AGREEMENTS	PL 96-8 SEC 4	VOL. II
LAW APPLICATION	PL 96-8 SEC 4	VOL. II
OPIC LOAN CRITERIA	PL 96-8 SEC 5	VOL. II
POLICY DECLARATION	PL 96-8 SEC 2	VOL. II
POLICY IMPLEMENTATION	PL 96-8 SEC 3	VOL. II
TAIWAN INSTRUMENTALITY	PL 96-8 SEC 10	VOL. II
WAR RESERVE MATERIAL TRANSFER OF	PL 96-92 SEC 23	VOL. I
TARIFF COMMISSION		

			PAGE
TARIFF COMMISSION--CONTINUED			
TRADE INJURIES			
TARIFF READJUSTMENT---	PL 87-794	SEC 351	VOL. III
TARIFF SCHEDULES			
COUNTRIES (FOREIGN)			
GSP ELIGIBILITY-------	19 USC 1202		VOL. III
TARIFFS			
(SEE ALSO TRADE)			
APPLICATION TO PRODUCTS OF			
DRUG PRODUCING OR			
DRUG-TRANSIT COUNTRIES---	PL 93-618	SEC 802	VOL. III
GATT			
UNIFORM FEE IMPOSITION	PL 100-418	SEC 1428	VOL. III
PRODUCTION-BASED DUTY			
REMISSION PROGRAMS			
USTR STUDY OF-------	PL 100-449	SEC 207	VOL. III
U.S. SCHEDULE OF RATES-----	PL 87-794	SEC 257	VOL. III
UNITED STATES-CANADA			
FREE-TRADE AGREEMENT-----	PL 100-449	SEC 201	VOL. III
TAXATION (U.S.)			
INTER-AMERICAN FOUNDATION--	PL 91-175	SEC 401	VOL. I
INTERNATIONAL ORGANIZATIONS	PL 79-291	SEC 3-6	VOL. II
OF HOSTAGES (U.S.)--------	PL 96-449	SEC 201	VOL. II
TAXATION			
DEEP SEABED HARD MINERALS--	PL 96-283	TITLE IV	79
DISCRIMINATORY			
DUTY-FREE TREATMENT			
DENIED----------	PL 93-618	SEC 502	VOL. III
FOREIGN AID CUT-OFF----	PL 87-195	SEC 620(E)	VOL. I
TECHNICAL ASSISTANCE			
(SEE ALSO PEACE CORPS)			
AGRICULTURAL DEVELOPMENT---	PL 83-480	SEC 406	VOL. I
COLOMBO PLAN----------	PL 86-108	SEC 502	VOL. I
EAST-WEST CENTER-------	PL 86-472	SEC 702	VOL. II
FOREIGN PARTICIPANTS IN			
COMPENSATION FOR------	PL 84-885	SEC 12	VOL. II
OPIC----------	PL 87-195	SEC 234(E)	VOL. I
STATUS OF SPECIALISTS------	PL 80-402	SEC 302-303	VOL. II
USIA----------	PL 80-402	SEC 301-303	VOL. II
TECHNOLOGY			
LIGHT CAPITAL			
PROMOTION OF BY			
FINANCIAL			
INSTITUTIONS-------	PL 95-118	SEC 801	VOL. III
TECHNOLOGY TRANSFERS			
CONTROL OF			
REPORT TO CONGRESS----	10 USC 113(I)		VOL. I
JAPANESE GOVERNMENT			
INVESTIGATION OF			
REPORT TO CONGRESS----	PL 100-204	SEC 1251	VOL. II
NATIONAL SECURITY IMPACT---	PL 95-92	SEC 24	VOL. I
NORWEGIAN GOVERNMENT			
INVESTIGATION OF			
REPORT TO CONGRESS----	PL 100-204	SEC 1251	VOL. II
STRATEGIC DEFENSE			
INITIATIVE			
SOVIET UNION			
RESTRICTIONS------	PL 100-180	SEC 223	VOL. I
TELECOMMUNICATIONS			
NATIONAL COMMUNICATIONS			
SYSTEM----------	EO 12472		573
TRADE AGREEMENTS			
FOREIGN TRADE BARRIERS	PL 100-418	SEC 1374	VOL. III
TELECOMMUNICATIONS CONFERENCES			
U.S. REPRESENTATION FROM			
PRIVATE SECTOR-------	PL 97-241	SEC 120	VOL. II
TELECOMMUNICATIONS TRADE ACT OF 1988----------	PL 100-418	SEC 1371	VOL. III
TEMPORARY EMERGENCY WILDFIRE SUPPRESSION ACT----------	PL 100-428		386
TERCENTENARY CELEBRATION			
COLLEGE OF WILLIAM AND MARY			
DESIGNATION---------	PL 99-393		615
TERRITORIAL SEAS			
(SEE SEA LAW)			
TERRORISM			
ACHILLE LAURO			
PUNISHMENT OF			
HIJACKERS---------	PL 99-177		VOL. II
AGAINST INTERNATIONALLY			
PROTECTED PERSONS------	PL 94-467		VOL. II
ANNUAL COUNTRY REPORT ON			
REPORT TO CONGRESS----	PL 100-204	SEC 140	VOL. II
ANTI-TERRORISM ACT OF 1987-	PL 100-204	TITLE X	VOL. II
ARMS SALES (U.S.)			
PROHIBITION---------	PL 90-629	SEC 3(F)	VOL. I
CONDEMNATION OF-------	PL 99-83	SEC 508	VOL. I
COUNTRIES AIDING			
AID PROHIBITION------	PL 87-195	SEC 620A	VOL. I
AVIATION BOYCOTT-----	PL 99-83	SEC 555	VOL. I

		PAGE
TERRORISM--CONTINUED		
BAN ON IMPORTING THEIR GOOD AND SERVICES	PL 99-83 SEC 505	VOL. I
DEFENSE DEPARTMENT CONTRACT PROHIBITION	10 USC 2327	VOL. I
DUTY FREE TREATMENT DENIED	PL 93-618 SEC 502	VOL. III
COUNTRIES ASSISTING AID PROHIBITION	PL 100-461 SEC 568	VOL. I
U.S. OPPOSITION TO	PL 100-461 SEC 567	VOL. I
COUNTRIES SUPPORTING PROHIBITION ON ARMS EXPORTS	PL 90-629 SEC 40	VOL. I
EXPORT CONTROLS COUNTRIES SUPPORTING	PL 96-72 SEC 6(J)	VOL. III
EXPORT-IMPORT BANK	PL 79-173 SEC 2(B)(1)	VOL. III
FOREIGN AID ANTITERRORISM PROGRAM	PL 87-195 SEC 571-574	VOL. I
FOREIGN AIRPORT SECURITY	PL 99-83 SEC 551	VOL. I
HONDURAS BOMBING OF U.S. SOLDIERS	PL 100-204 SEC 1213	VOL. II
IMF PROHIBITION ON ASSISTANCE	PL 95-435 SEC 6	VOL. III
INTELLIGENCE ON TERRORIST ACTIVITY REPORTING BY DEFENSE PERSONNEL	PL 99-661 SEC 1353	VOL. I
INTERNATIONAL ACTIVITIES DEFINED	50 USC 1801(C)	VOL. II
CONVENTION TO PREVENT AND CONTROL	PL 99-399 SEC 1201	VOL. II
COOPERATION TO COMBAT	PL 99-399 SEC 701	VOL. II
ORGANIZATIONS DEFINED	50 USC 1801(A)(4)	VOL. II
REPORT TO CONGRESS	PL 99-399 SEC 705	VOL. II
INTERNATIONAL ACT TO COMBAT, 1984	PL 98-533	VOL. II
INTERNATIONAL ANTI-TERRORISM COMMITTEE	PL 99-83 SEC 506	VOL. I
PROPOSAL FOR	PL 99-399 SEC 701	VOL. II
INTERNATIONAL NUCLEAR ACTIONS TO COMBAT	PL 99-399 SEC 601	VOL. II
REPORTS TO CONGRESS	PL 99-399 SEC 601	VOL. II
LIBYA	PL 97-113 SEC 718	VOL. I
PROHIBITION ON IMPORTS AND EXPORTS	PL 99-83 SEC 504	VOL. I
MISUSE OF DIPLOMATIC PRIVILEGES AND IMMUNITIES FOR	PL 99-399 SEC 704	VOL. II
PASSPORTS AND VISAS INTERNATIONAL INFORMATION SHARING ON	PL 99-399 SEC 702	VOL. II
PLACE OF BIRTH INFORMATION	PL 99-399 SEC 703	VOL. II
PROTECTING U.S. MILITARY PERSONNEL	PL 99-145 SEC 1452	VOL. I
REWARD FOR INFORMATION ON	PL 84-885 SEC 36 PL 98-533 SEC 101	VOL. II VOL. II
PROTECTION FOR PERSONS PROVIDING ASSISTANCE	PL 84-885 SEC 39	VOL. II
SEAPORT AND SHIPBOARD SECURITY INTERNATIONAL MEASURES FOR	PL 99-399 SEC 902	VOL. II
SHIPS PROTECTING PASSENGERS AND CREWS	PL 99-399 SEC 902	VOL. II
TERRORISM-RELATED ASSISTANCE COORDINATED BY SECRETARY OF STATE	PL 99-83 SEC 502	VOL. I
REPORT TO CONGRESS	PL 99-83 SEC 502	VOL. I
TREATY TO CONTROL	PL 99-83 SEC 507	VOL. I
U.S. CITIZENS INVOLVED IN	PL 97-113 SEC 719	VOL. I
VICTIMS OF COMPENSATION	PL 99-399 SEC 801	VOL. II
WORLD SUMMIT ON SENSE OF CONGRESS	PL 100-204 SEC 1252	VOL. II
TERRORISM, ANTI FOREIGN AID APPROPRIATIONS, 1989	PL 100-461 TITLE II	VOL. I
TEXTILE AGREEMENTS, COMMITTEE FOR THE IMPLEMENTATION OF	EO 11651	VOL. II
THAILAND-U.S. RELATIONS AMMUNITION SALE	PL 96-92 SEC 24	VOL. I
RICE IMPORTS	PL 99-198 SEC 1165	VOL. I
THORNTON, CHARLES E.		

			PAGE
THORNTON, CHARLES E.--CONTINUED			
PRESIDENTIAL MEDAL OF FREEDOM	PL 100-463	SEC 8144	VOL. I
THRESHOLD TEST BAN TREATY			
SOVIET UNION COMPLIANCE REPORT TO CONGRESS	PL 100-180	SEC 903	VOL. II
TIBET			
HUMAN RIGHTS VIOLATIONS BY CHINA	PL 100-204	SEC 1243	VOL. II
TIED AID CREDIT FUND			
AUTHORIZATION OF APPROPRIATIONS, FY 1987-88	PL 79-173	SEC 15(E)	VOL. III
ESTABLISHED IN EXMPORT-IMPORT BANK	PL 79-173	SEC 15(C)	VOL. III
TIED AID CREDIT PROGRAM			
COMMERCIAL PURPOSES RESTRICTING USE OF	PL 79-173	SEC 15	VOL. III
COORDINATION WITH OTHER EXPORT FINANCING	PL 79-173	SEC 15(B)(3)	VOL. III
ESTABLISHMENT OF	PL 79-173	SEC 15(B)	VOL. III
MARKET-DISTORTING EFFECTS	PL 79-173	SEC 15	VOL. III
PREDACIOUS EXPORT FINANCING INFORMATION ON COUNTRIES ENGAGING IN	PL 79-173	SEC 15(B)(4)	VOL. III
REPORTS TO CONGRESS	PL 79-173	SEC 15(G)	VOL. III
TIED AID CREDITS			
PRACTICES OF OTHER COUNTRIES REPORT TO CONGRESS	PL 100-418	SEC 3302	VOL. III
PROVISIONS RELATING TO	PL 100-418	SEC 3302	VOL. III
TIN			
DISPOSAL OF	PL 96-175	SEC 3	VOL. III
INTERNATIONAL COUNCIL U.S. CONTRIBUTION	PL 95-426	SEC 704	VOL. II
TIN BUFFER STOCK			
U.S. CONTRIBUTION TO	PL 96-175	SEC 5	VOL. III
TOKYO ROUND			
TRADE AGREEMENTS CONGRESSIONAL APPROVAL OF	PL 96-39	SEC 2	VOL. III
TONKIN GULF RESOLUTION	PL 88-408		VOL. II
REPEALED	PL 91-672	SEC 12	VOL. I
TORT CLAIMS			
(SEE CLAIMS)			
TOSHIBA COPRORATION			
PROCUREMENT OF GOODS OR SERVICES PROHIBITION	PL 100-456	SEC 313	VOL. I
PRODUCTS PROHIBITED IN COMMISSARIES AND EXCHANGES	PL 100-463	SEC 8092	VOL. I
TOSHIBA CORPORATION			
SANCTIONS AGAINST	PL 100-418	SEC 2443(B)	VOL. III
TOSHIBA MACHINE COMPANY			
SANCTIONS AGAINST	PL 100-418	SEC 2443(A)	VOL. III
TOURISTS (U.S.)			
FOREIGN CURRENCIES AGRICULTURAL COMMODITY SALES	PL 83-480	SEC 103(M)	VOL. I
	PL 83-480	SEC 104(J)	VOL. I
TRADE			
(SEE ALSO EXPORTS)			
(SEE ALSO GATT)			
(SEE ALSO IMPORTS)			
(SEE ALSO MOST-FAVORED-NATION TREATMENT)			
(SEE ALSO TRADE AGREEMENTS PROGRAM)			
(SEE ALSO U.S. TRADE REPRESENTATIVE)			
AGRICULTURAL TRADE AND EXPORT POLICY, NATIONAL COMMISSION ON	PL 97-98	SEC 1220	VOL. I
ARMS			
(SEE ARMS SALES)			
BARTER AND COUNTERTRADE INTERAGENCY GROUP CN	PL 100-418	SEC 2205	VOL. III
BARTER PROGRAMS REPORT TO CONGRESS	PL 99-64	SEC 203	VOL. III
CARIBBEAN BASIN INITIATIVE	PL 98-67	SEC 211-218	VOL. III
(SEE ALSO CBI)	PL 98-67		VOL. III
CERTIFICATES OF REVIEW	PL 97-290	SEC 301	VOL. III
CHINA			
MFN TREATMENT	EO 12167		VOL. III
COMMODITIES			
COMPETITION WITH U.S.	PL 100-461	SEC 548	VOL. I
CUBA	PL 71-361	SEC 350(B)	VOL. III

		PAGE
TRADE--CONTINUED		
EMBARGO	PL 87-195 SEC 620(A)	VOL. I
DISCRIMINATION BY FOREIGN COUNTRIES	PL 71-361 SEC 338	VOL. III
DISCRIMINATORY POLICY (U.S.)	PL 95-426 SEC 606	VOL. II
DRUGS		
EFFECT ON ADB LOANS	PL 89-369 SEC 19	VOL. III
EFFECT ON IADB LOANS	PL 86-147 SEC 22	VOL. III
EFFECT ON IDA LOANS	PL 86-565 SEC 13	VOL. III
FOREIGN AID	PL 87-195 SEC 481-482	VOL. I
EAST-WEST	PL 93-618 SEC 402-411	VOL. III
FOREIGN TRADE BOARD	PL 93-618 SEC 410-411	VOL. III
MONITORING SYSTEM	PL 93-618 SEC 410-411	VOL. III
ENDANGERED SPECIES	PL 93-205 SEC 9(A)	201
EUROPEAN COMMUNITIES		
UNFAIR PRACTICES	PL 99-198 SEC 1164	VOL. I
FOREIGN COUNTRIES		
COMODITY SALES AGREEMENTS	PL 100-202 SEC 101(O)	VOL. I
FOREIGN TRADE ZONE		
PROVISIONS	PL 98-573 SEC 231	VOL. III
GATT		
IMPROVING AND EXTENDING AGREEMENT	PL 100-418 SEC 1101(A)(2)	VOL. III
VIOLATIONS BY THE EUROPEAN COMMUNITIES	PL 99-198 SEC 1164	VOL. I
INTERNATIONAL TRADE COMMISSION		
ADJUSTMENT ASSISTANCE	PL 93-618 SEC 224	VOL. III
CARIBBEAN BASIN		
INITIATIVE	PL 98-67 SEC 215	VOL. III
IMPORT RELIEF	PL 93-618 SEC 203	VOL. III
ORGANIZATION	PL 71-361 SEC 330	VOL. III
REPRESENTATION IN COURT	PL 71-361 SEC 333	VOL. III
TRADE INJURIES	PL 93-618 SEC 201	VOL. III
VOTING	PL 71-361 SEC 330(D)	VOL. III
MISSIONS TO FOREIGN COUNTRIES	PL 100-202 SEC 101(O)	VOL. I
MULTILATERAL TRADE NEGOTIATIONS	PL 96-39	VOL. III
NONTARIFF BARRIERS		
AGREEMENTS REGARDING	PL 100-418 SEC 1102(B)	VOL. III
PROMOTION OF	PL 97-290	VOL. III
IMF	PL 79-171 SEC 49	VOL. III
STATISTICS ON	13 USC 301	VOL. III
TARIFF BARRIERS		
AGREEMENTS REGARDING	PL 100-418 SEC 1102	VOL. III
TECHNICAL BARRIERS TO	PL 96-39 SEC 401	VOL. III
TRADE REMEDY ASSISTANCE OFFICE	PL 71-361 SEC 339	VOL. III
U.S. GOVERNMENT		
REORGANIZATION OF	PL 96-39 SEC 1109	VOL. III
U.S. NEGOTIATING OBJECTIVES	PL 100-418 SEC 1101	VOL. III
U.S. POLICY	PL 93-618 SEC 103	VOL. III
	PL 93-618 SEC 2	VOL. III
NEGOTIATING OBJECTIVES	PL 100-418 SEC 1101	VOL. III
SENSE OF CONGRESS	PL 99-198 SEC 1121	VOL. I
U.S. SERVICE INDUSTRIES DEVELOPMENT PROGRAM	PL 98-573 SEC 306	VOL. III
WITH THE ENEMY	PL 65-91 SEC 5	VOL. III
TRADE ACT OF 1974	PL 93-618	VOL. III
(SEE ALSO TRADE)		
PURPOSES	PL 93-618 SEC 2	VOL. III
TRADE ADJUSTMENT ASSISTANCE TRUST FUND		
ADDITIONAL FEES TO FUND	PL 93-618 SEC 287	VOL. III
TRADE AGREEMENTS		
"FAST TRACK" PROCEDURES		
APPLICATION OF	PL 100-418 SEC 1103(B)	VOL. III
ADVICE FROM PUBLIC AND PRIVATE SECTORS	PL 93-618 SEC 135	VOL. III
ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS	PL 93-618 SEC 135	VOL. III
APPROVAL OF	PL 96-39 SEC 2	VOL. III
AUTHORITY TO MODIFY IMPORT DUTIES	PL 87-794 SEC 201	VOL. III
BARRIERS TO MARKET ACCESS		
REPORT BY U.S. TRADE REPRESENTATIVE	PL 93-618 SEC 181	VOL. III
BUDGET AUTHORITY	PL 96-39 SEC 111	VOL. III
CANADA	PL 93-618 SEC 126	VOL. III
CIVIL AIRCRAFT	PL 96-39 SEC 303	VOL. III
CONCESSIONS TO OFFSET DUTIES	PL 93-618 SEC 123	VOL. III
CONSULTATION WITH CONGRESS	PL 100-418 SEC 1102(D)	VOL. III
DEFINITIONS		

		PAGE
TRADE AGREEMENTS--CONTINUED		
DISCRIMINATORY FOREIGN TREATMENT		
ENFORCEMENT OF U.S. RIGHTS	PL 93-618 SEC 301-306	VOL. III
DUTIES INCREASED	PL 93-618 SEC 125	VOL. III
EAST-WEST FOREIGN TRADE BOARD	EO 11846 SEC 7	VOL. III
EEC	PL 93-618 SEC 126	VOL. III
EFFECTIVE DATE OF	PL 93-618 SEC 102	VOL. III
FOREIGN DIRECT INVESTMENT	PL 100-418 SEC 1101(A)(1)	VOL. III
FREEDOM TO EMIGRATE	PL 93-618 SEC 402	VOL. III
WAIVER FOR HUNGARY	EO 12051	VOL. III
GOVERNMENT PROCUREMENT	PL 96-39 SEC 301-309	VOL. III
HIGH TECHNOLOGY INDUSTRIES	PL 98-573 SEC 308	VOL. III
HIGH TECHNOLOGY PRODUCTS MODIFICATION OR CONTINUANCE OF TREATMENT	PL 93-618 SEC 128	VOL. III
IMPLEMENTATION OF	PL 100-418 SEC 1103	VOL. III
IMPLEMENTING LEGISLATION CONGRESSIONAL PROCEDURES	PL 93-618 SEC 151-154	VOL. III
IMPORT DUTIES	PL 71-361 SEC 350	VOL. III
IMPORT RELIEF	EO 11846 SEC 5	VOL. III
INDUSTRIAL COUNTRIES	PL 93-618 SEC 126	VOL. III
INTERAGENCY TRADE ORGANIZATION	PL 87-794 SEC 242	VOL. III
INTERNATIONAL COFFEE AGREEMENT ACT OF 1980 EXTENSION OF	PL 100-418 SEC 1123	VOL. III
INTERNATIONAL TRADE COMMISSION	EO 11846 SEC 4-6	VOL. III
ISRAEL	PL 98-573 SEC 401	VOL. III
ELIMINATION OR REDUCTION OF DUTIES	PL 93-618 SEC 102	VOL. III
JAPAN	PL 93-618 SEC 126	VOL. III
LIMITATIONS ON REDUCTIONS OF DUTIES	PL 93-618 SEC 102	VOL. III
LISTED	PL 96-39 SEC 2(C)	VOL. III
MARKET DISRUPTION	EO 11846 SEC 5	VOL. III
MOST-FAVORED-NATION PRINCIPLE	PL 87-794 SEC 251	VOL. III
MOST-FAVORED-NATION TREATMENT	EO 11846 SEC 8	VOL. III
EXTENDED	PL 93-618 SEC 404-405	VOL. III
NATIONAL SECURITY CONSIDERATIONS	PL 87-794 SEC 232	VOL. III
NEGOTIATING AUTHORITY	PL 100-418 SEC 1102	VOL. III
NEGOTIATIONS	EO 11846 SEC 4	VOL. III
DELEGATES	PL 93-618 SEC 161	VOL. III
DISCLOSURE OF INFORMATION	PL 93-618 SEC 135	VOL. III
PRESIDENTIAL AUTHORITY	PL 71-361 SEC 350	VOL. III
RATES	PL 87-794 SEC 201	VOL. III
RECIPROCAL NONDISCRIMINATORY TREATMENT PRESIDENTIAL DETERMINATION	PL 100-418 SEC 1105	VOL. III
RECIPROCAL TREATMENT MAJOR INDUSTRIAL COUNTRIES	PL 93-618 SEC 126	VOL. III
REFORM OF	PL 98-573 TITLE VI	VOL. III
REPORTS TO CONGRESS	EO 11846 SEC 2(C)	VOL. III
ROLE OF SURCHARGES	PL 93-618 SEC 122	VOL. III
STATE TRADING ENTERPRISES IMPACT ON U.S. FOREIGN TRADE	PL 100-418 SEC 1106	VOL. III
SUBMITTED TO CONGRESS	PL 93-618 SEC 102	VOL. III
TARIFF AND NONTARIFF BARRIERS BILATERAL AGREEMENTS	PL 100-418 SEC 1102(C)	VOL. III
TECHNICAL BARRIERS	PL 96-39 SEC 401	VOL. III
TERMINATION OF	PL 87-794 SEC 255	VOL. III
TEXTILE	EO 11651	VOL. II
TRADE POLICY COMMITTEE	EO 11846 SEC 3	VOL. III
TRADE SECRETS	PL 93-618 SEC 135	VOL. III
TRANSMITTAL TO CONGRESS	PL 93-618 SEC 162	VOL. III
U.S. LAW RELATIONSHIP TO	PL 96-39 SEC 3	VOL. III
U.S. TRADE REPRESENTATIVE	EO 11846 SEC 2	VOL. III
UNFAIR TRADE PRACTICES	PL 100-418 SEC 1101(A)(8)	VOL. III
WINE EQUITY AND EXPORT EXPANSION ACT OF 1984 ELIMINATING TRADE BARRIERS	PL 100-418 SEC 1125	VOL. III
WITHDRAWAL FROM	PL 93-618 SEC 125	VOL. III
WORKER RIGHTS PROMOTION OF	PL 100-418 SEC 1101(A)(1)	VOL. III

			PAGE
TRADE AGREEMENTS ACT OF 1979	PL 96-39		VOL. III
TRADE AGREEMENTS PROGRAM			
ADMINISTRATION OF	EO 11846		VOL. III
DEFINED	EO 11846	SEC 1	VOL. III
TRADE AJUSTMENT ASSISTANCE TRUST FUND	PL 93-618	SEC 286	VOL. III
TRADE AND DEVELOPMENT ENHANCEMENT ACT OF 1983	PL 98-181	SEC 641-647	VOL. III
TRADE AND DEVELOPMENT PROGRAM	PL 87-195	SEC 661	VOL. I
APPROPRIATIONS, 1989	PL 100-461	TITLE IV	VOL. I
TRADE AND DEVELOPMENT PROGRAM			
AUTHORIZATION OF APPROPRIATIONS	PL 100-418	SEC 2204	VOL. III
SUPPORT FOR	PL 100-418	SEC 2204	VOL. III
TRADE AND TARIFF ACT OF 1984	PL 98-573		VOL. III
TRADE COMMISSION			
(SEE TRADE)			
TRADE CREDIT INSURANCE PROGRAM			
COMMITMENTS TO, 1989	PL 100-461	TITLE IV	VOL. I
TRADE EXPANSION ACT OF 1962	PL 87-794		VOL. III
GENERAL PROVISIONS			
PURPOSE OF	PL 87-794	SEC 102	VOL. III
TRADE INJURIES			
ACTIONS TAKEN TO RELIEVE			
MONITORING AND			
TERMINATION OF	PL 93-618	SEC 204	VOL. III
ADJUSTMENT ASSISTANCE			
INTERNATIONAL			
AGREEMENTS	PL 87-794	SEC 352	VOL. III
PENALTIES	PL 87-794	SEC 319	VOL. III
PETITIONS FOR	PL 93-618	SEC 246	VOL. III
RECORDS	PL 87-794	SEC 318	VOL. III
TARIFF ADJUSTMENT	PL 87-794	SEC 351	VOL. III
ADJUSTMENT ASSISTANCE			
COORDINATING COMMITTEE	PL 93-618	SEC 281	VOL. III
ADJUSTMENT ASSISTANCE FOR			
FIRMS			
PETITIONS	PL 93-618	SEC 251	VOL. III
ADJUSTMENT ASSISTANCE FOR			
WORKERS			
ELIGIBILITY	PL 93-618	SEC 222-223	VOL. III
INFORMATION ON	PL 93-618	SEC 225	VOL. III
PETITIONS	PL 93-618	SEC 221	VOL. III
REPORT TO PRESIDENT	PL 93-618	SEC 224	VOL. III
FIRMS RELOCATING ABROAD	PL 93-618	SEC 283	VOL. III
IMPORT RELIEF			
ELIGIBILITY	PL 93-618	SEC 201	VOL. III
PRESIDENTIAL ACTION	PL 93-618	SEC 203	VOL. III
INDUSTRIAL TARGETING			
REPORT TO CONGRESS	PL 98-573	SEC 625	VOL. III
INTERNATIONAL TRADE			
COMMISSION	PL 93-618	SEC 201	VOL. III
INVESTIGATIONS,			
DETERMINATIONS, AND			
RECOMMENDATIONS	PL 93-618	SEC 202	VOL. III
MONITORING IMPORTS	PL 93-618	SEC 282	VOL. III
U.S. TRADE REPRESENTATIVE	PL 93-618	SEC 201	VOL. III
UNFAIR IMPORT PRACTICES	PL 71-361	SEC 337	VOL. III
TRADE NEGOTIATIONS			
ADJUSTMENTS TO CHANGES	PL 93-618	SEC 107	VOL. III
ADVISORY COMMITTEE FOR			
TRADE NEGOTIATIONS	PL 93-618	SEC 104	VOL. III
AUTHORITY TO CHANGE RATES	PL 93-618	SEC 101	VOL. III
BILATERAL TRADE AGREEMENTS	PL 93-618	SEC 105	VOL. III
COMPETITION OPPORTUNITIES	PL 93-618	SEC 104	VOL. III
ECONOMIC SECTORS CONSIDERED	PL 93-618	SEC 104	VOL. III
FOREIGN DIRECT INVESTMENT	PL 93-618	SEC 104A	VOL. III
FOREIGN SOURCES OF U.S.			
SUPPLIES	PL 93-618	SEC 108	VOL. III
HIGH TECHNOLOGY PRODUCTS	PL 93-618	SEC 104A	VOL. III
RATES			
ROUNDING AUTHORITY	PL 93-618	SEC 109	VOL. III
STAGING REQUIREMENTS	PL 93-618	SEC 109	VOL. III
TRADE IN SERVICES	PL 93-618	SEC 104A	VOL. III
U.S. TRADE REPRESENTATIVE	EO 12188		VOL. III
WITH LESS DEVELOPED			
COUNTRIES	PL 93-618	SEC 106	VOL. III
TRADE SECRETS			
TRADE AGREEMENTS	PL 93-618	SEC 135	VOL. III
TRADEMARKS			
TRADE AGREEMENTS	PL 93-618	SEC 405	VOL. III
TRADING WITH THE ENEMY ACT OF 1917	PL 65-91		VOL. III
TRAINING			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE)			
(SEE FOREIGN SERVICE INSTITUTE)			
(SEE LANGUAGE TRAINING)			

			PAGE
TRAVEL			
AIR CARRIERS			
FOREIGN	PL 95-426	SEC 706	VOL. II
U.S. AIR MARSHALL PROGRAM	PL 99-83	SEC 553	VOL. I
FOREIGN AIRPORT SECURITY TRAVEL ADVISORY	PL 99-83	SEC 552	VOL. I
FOREIGN CITIZENS IN U.S.	PL 95-426	SEC 126	VOL. II
TRAVEL ABROAD			
(SEE ALSO PASSPORTS)			
AVAILABILITY OF LOCAL CURRENCIES	PL 83-665	SEC 502	431
	PL 83-665	SEC 502	VOL. I
CONGRESSIONAL MEMBERS AND STAFF	PL 83-665	SEC 502	431
CONGRESSIONAL MEMBERS AND STAFFS	PL 83-665	SEC 502	VOL. I
TRAVEL CONTROL			
(SEE IMMIGRATION)			
(SEE PASSPORTS)			
(SEE VISAS)			
TRAVEL DOCUMENT AND ISSUANCE SYSTEM	PL 94-141	SEC 102	VOL. II
TRAVEL DOCUMENTS			
(SEE PASSPORTS)			
(SEE VISAS)			
TREASURY, DEPARTMENT OF			
INSPECTOR GENERAL SPECIAL PROVISIONS	PL 95-452	SEC 8C	593
INTELLIGENCE RESPONSIBILITIES	EO 12333	SEC 1.10	VOL. II
REIMBURSED BY FEDERAL AGENCIES USING FOREIGN CURRENCIES	PL 87-125	SEC 508	VOL. I
TREASURY, SECRETARY OF			
BARRING IMPORT OF FISH PRODUCTS	PL 83-680	SEC 8	186
EXPORT-IMPORT BANK LOSSES COVERED	PL 90-390	SEC 2-3	VOL. III
FOREIGN PORTFOLIO INVESTMENT IN U.S. STUDY OF	PL 93-479	SEC 2	VOL. III
REGULATING FOREIGN CURRENCIES	31 USC 1306	NOTE	VOL. I
REPORTS TO CONGRESS	PL 93-479	SEC 10	VOL. III
TRADE AGREEMENTS	PL 87-794	SEC 232	VOL. III
TRADE STATISTICS	13 USC 301		VOL. III
UNFAIR IMPORT PRACTICES	PL 71-361	SEC 337	VOL. III
TREATY POWER			
(SEE ALSO EXECUTIVE-LEGISLATIVE RELATIONS)			
ARMS CONTROL	PL 87-297	SEC 33	VOL. II
LEGISLATION IMPLEMENTING	PL 93-148	SEC 8	VOL. II
TRUST TERRITORIES OF THE PACIFIC ISLANDS			
FOREIGN SERVICE INSTITUTE STUDY AT	PL 96-465	SEC 701(C)	VOL. II
TRUST TERRITORY OF THE PACIFIC ISLANDS			
(SEE ALSO U.N.)			
TUNA			
(SEE FISHERIES, TUNA)			
TUNA CONVENTION ACT OF 1950	PL 81-764		117
AUTHORIZATION OF APPROPRIATIONS	PL 81-764	SEC 12	123
TUNISIA			
ECONOMIC SUPPORT FUND	PL 99-83	SEC 805	VOL. I
TURKEY			
ECONOMIC CONDITIONS IMPACT ON FOREIGN DEBT	PL 99-83	SEC 1205	VOL. I
TURKEY-NATO RELATIONS			
U.S. AID SUSPENSION	PL 87-195	SEC 620(X)	VOL. I
TURKEY-U.S. RELATIONS	PL 87-195	SEC 620C	VOL. I
AIR DEFENSE OF U.S. MILITARY BASES	PL 98-525	SEC 105	VOL. I
ARMS SALES	PL 99-83	SEC 101(F)	VOL. I
ARMS SALES CREDITS REPAYMENT	PL 96-92	SEC 17(B)	VOL. I
CYPRUS CONFLICT	PL 94-104	SEC 2	VOL. I
ECONOMIC SUPPORT FUND FY 1979 SUPPLEMENTAL AUTHORIZATION	PL 96-92	SEC 27	VOL. I
FOREIGN AID APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
DISASTER RELIEF	PL 87-195	SEC 495E	VOL. I
MILITARY AID SUSPENSION OF	PL 87-195	SEC 620(X)	VOL. I
OPIUM POPPY DISCUSSION	PL 94-104	SEC 2	VOL. I

		PAGE
U		
U.N.		
VOLUNTARY CONTRIBUTIONS BY U.S.	PL 87-195 SEC 302	VOL. I
ARMS SALES	PL 90-629 SEC 4	VOL. I
ARMS TRADE, DEBATE ON	PL 91-672 SEC 6	VOL. I
BUDGET DECISION-MAKING PROCEDURES		
REFORM IN	PL 100-204 SEC 702	VOL. II
BUDGET PROCEDURES INPUT FROM MAJOR FINANCIAL CONTRIBUTORS	PL 99-93 SEC 143(A)	VOL. II
CONFERENCE ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT	PL 95-105 SEC 507	VOL. II
CONTRIBUTIONS BY MEMBER NATIONS		
ASSESSMENT SCALE REFORMS	PL 95-105 SEC 503(6)	VOL. II
COUNTRIES SUPPORTING U.S. POLICY		
REPORT TO CONGRESS	PL 100-461 SEC 527	VOL. I
DUES FOR MEMBERSHIP		
FOREIGN AID CUT-OFF FOR DEFAULTS	PL 87-195 SEC 620(U)	VOL. I
EMPLOYEES		
EXEMPTIONS TO HIRING FREEZE	PL 100-204 SEC 701	VOL. II
RESPONSIBILITIES OF THE U.S. FOR	PL 84-885 SEC 209A	VOL. II
RETURNING SALARIES TO RESPECTIVE GOVERNMENTS	PL 99-93 SEC 151	VOL. II
ENVIRONMENT FUND		
U.S. CONTRIBUTIONS TO	PL 93-188	VOL. II
FAO		
(SEE FAO)		
FINANCES		
CONTRIBUTIONS FROM UNITED NATIONS REGULATED COMMERCE, SERVICES AND RESOURCES	PL 95-105 SEC 503(3)	VOL. II
FOOD PROGRAMS	PL 83-480 SEC 205	VOL. I
FOOD SUPPLIES		
CONFERENCE ON	PL 93-189 SEC 39	VOL. I
GENERAL ASSEMBLY		
WEIGHTED VOTING REFORMS	PL 95-105 SEC 503(1)	VOL. II
GLOBAL PROBLEMS		
IMPROVING EFFECTIVENESS IN RESOLVING	PL 95-105 SEC 503	VOL. II
GROUP OF 19		
RECOMMENDATIONS ON SECONDED EMPLOYEES	PL 99-93 SEC 143(B)(1)(B)	VOL. II
HEADQUARTERS		
NEGOTIATIONS FOR LOCATING	PL 80-357	VOL. II
HUMAN RIGHTS ACTIVITIES		
INCREASED INVOLVEMENT IN	PL 95-105 SEC 503(4)	VOL. II
INTERNATIONAL COURT OF JUSTICE		
MAKING GREATER USE OF	PL 95-105 SEC 503(2)	VOL. II
ISRAELI EXPULSION FROM		
U.S. REACTION	PL 98-164 SEC 115	VOL. II
LEGAL CAPACITY	PL 80-357	VOL. II
LIMITATION ON U.S. ASSESSED CONTRIBUTIONS	PL 99-93 SEC 143(B)	VOL. II
LODGE COMMISSION	PL 92-226 SEC 410	VOL. I
MIAS IN INDOCHINA	PL 94-141 SEC 503	VOL. II
MIDDLE EAST CONFLICT	PL 93-199 SEC 6	VOL. I
	PL 85-7 SEC 6	VOL. II
U.S. CONTRIBUTION	PL 94-37	VOL. II
MUTUAL DEFENSE		
SPECIAL AGREEMENTS	PL 79-264 SEC 6	VOL. II
U.S. ROLE IN	PL 93-148 SEC 8	VOL. II
NONALIGNED COUNTRIES		
COMMUNIQUE BY	PL 97-113 SEC 720	VOL. I
PEACEKEEPING		
MIDDLE EAST	PL 94-37	VOL. II
PRIVILEGES AND IMMUNITIES	PL 80-357	VOL. II
REFORM OF		
COMMISSION TO IMPROVE	PL 100-204 SEC 721	VOL. II
REFORMS		
U.S. INITIATIVES	PL 95-105 SEC 503	VOL. II
REFUGEES		

			PAGE
U.N.—CONTINUED			
(SEE UNITED NATIONS			
ATIONS HIGH COMMISSIONER			
UGEES)			
SCIENCE AND TECHNOLOGY			
CONFERENCE	PL 95-426	SEC 103	VOL. II
SECRETARIAT			
SECONDED EMPLOYEES			
LIMITATION	PL 99-93	SEC 143(B)(1)(B)	VOL. II
SECURITY COUNCIL			
MILITARY AGREEMENTS	PL 79-264	SEC 6	VOL. II
MODIFYING VETO POWERS	PL 95-105	SEC 503(1)	VOL. II
SETTLING DISPUTES			
ESTABLISHING BETTER			
METHODS FOR	PL 95-105	SEC 503(5)	VOL. II
SOVIET MISSION			
NUMBER OF MEMBERS	PL 99-569	SEC 702	VOL. II
SOVIET UNION ARREARAGES	PL 97-113	SEC 717	VOL. I
TONKIN GULF RESOLUTION	PL 88-408		VOL. II
TRUST TERRITORIES			
MICRONESIA	PL 92-39		501
PACIFIC ISLANDS	PL 83-451		504
	PL 92-257		511
U.S. CONTRIBUTION TO			
LIMITATIONS ON	PL 98-164	SEC 113	VOL. II
PLO USE OF	PL 98-164	SEC 114(B)	VOL. II
SWAPO USE OF	PL 98-164	SEC 114(B)	VOL. II
USE BY PLO	PL 97-241	SEC 104	VOL. II
U.S. CONTRIBUTIONS TO			
LIMITATIONS ON	PL 92-544		VOL. II
U.S. PARTICIPATION IN	PL 80-402	SEC 3	VOL. II
(SEE ALSO UNITED			
NATIONS			
PARTICIPATION ACT OF			
1945)			
REVIEW OF	PL 98-164	SEC 116	VOL. II
UNITED NATIONS DEVELOPMENT			
PROGRAM			
COORDINATING TECHNICAL			
ASSISTANCE			
ACTIVITIES	PL 95-105	SEC 503(7)	VOL. II
UNITED NATIONS EMERGENCY			
FORCE			
MIDDLE EAST	PL 85-7	SEC 4	VOL. II
UNITED NATIONS INTERIM			
FORCE IN LEBANON			
PROTECTING			
ARCHAEOLOGICAL SITE			
AT TYRE	PL 100-204	SEC 708	VOL. II
UNITED STATES COMMISSION ON			
IMPROVING THE			
EFFECTIVENESS OF			
ESTABLISHMENT OF	PL 100-204	SEC 721-730	VOL. II
WAR CRIMES COMMMISSION			
FILES			
PUBLIC ACCESS TO	PL 100-204	SEC 706	VOL. II
ZIONISM			
U.S. RESPONSE TO	H RES 94-855		VOL. II
U.S. RESPONSE TO			
RESOLUTION 3379			
(XXX)	PL 100-169		VOL. II
ZIONISM RESOLUTION			
U.S. RESPONSE TO	PL 99-90		VOL. II
U.N. CHARTER			
(SEE SUBHEADINGS UNDER			
U.N.)			
U.N. COMMISSION ON NARCOTIC			
DRUGS			
COMPLETION OF WORK	PL 99-570	SEC 2023	VOL. I
U.N. EMERGENCY FORCE			
U.S. CONTRIBUTIONS TO	PL 93-199	SEC 6	VOL. I
U.N. RELIEF AND WORKS AGENCY			
MIDDLE EAST	PL 87-195	SEC 301	VOL. I
U.S. ADVISORY COMMISSION ON			
EDUCATIONAL EXCHANGE	PL 80-402	SEC 601-603	VOL. II
	PL 87-256	SEC 106	VOL. II
(SEE ALSO USIA, ADVISORY			
COMMISSIONS)			
U.S. ADVISORY COMMISSION ON			
INFORMATION	PL 80-402	SEC 601-603	VOL. II
(SEE ALSO USIA, ADVISORY			
COMMISSIONS)			
U.S. ADVISORY COMMISSION ON			
INTERNATIONAL EDUCATIONAL AND			
CULTURAL AFFAIRS	EO 11034	SEC 7	VOL. II
U.S. COORDINATOR FOR REFUGEE			
AFFAIRS	PL 96-212	SEC 301	VOL. II
U.S. DISARMAMENT ADMINISTRATION			
TRANSFERRED TO ACDA	PL 87-297	SEC 47	VOL. II
(SEE ALSO ACDA)			

			PAGE
U.S. EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND ESTABLISHMENT OF	PL 87-510	SEC 2(C)	VOL. II
U.S. INTERNATIONAL NARCOTICS CONTROL COMMISSION	PL 99-93	SEC 814	VOL. II
U.S. MISSIONS ABROAD			
EMPLOYMENT OPPORTUNITIES FOR SPOUSES	PL 99-93	SEC 120	VOL. II
FOREIGN NATIONAL EMPLOYEES			
REPORT TO CONGRESS	PL 100-204	SEC 159	VOL. II
RESTRICTIONS ON	PL 100-204	SEC 157	VOL. II
TERMINATION OF RETIREMENT BENEFITS	PL 100-204	SEC 158	VOL. II
HUNGARY			
EXCLUSION OF FOREIGN NATIONAL EMPLOYEES	PL 100-204	SEC 164	VOL. II
PERSONNEL SECURITY	PL 100-204	SEC 155	VOL. II
PROMOTING FREEDOM OF THE PRESS	PL 99-93	SEC 138	VOL. II
PROMOTING U.S. BUSINESS INTERESTS	PL 99-93	SEC 137	VOL. II
SECURITY			
ADVISORY PANEL ON	PL 98-533	SEC 301	VOL. II
SECURITY IMPROVEMENTS	PL 99-399	SEC 408	VOL. II
SERIOUS INJURY, DEATH, OR DESTRUCTION OF PROPERTY ACCOUNTABILITY REVIEW BOAR	PL 99-399	SEC 302	VOL. II
SOVIET UNION			
RECIPROCITY TOWARD U.S.	PL 100-204	SEC 153	VOL. II
U.S. EMBASSY IN MOSCOW SOVIET UNION REIMBURSEMENT	PL 100-204	SEC 152	VOL. II
U.S. SPECIAL RESOURCES			
ADB	PL 89-369	SEC 12-17	VOL. III
WHERE SPENT	PL 89-369	SEC 13	VOL. III
U.S. TRADE REPRESENTATIVE			
FOREIGN DIRECT INVESTMENT NEGOTIATING AUTHORITY	PL 98-573	SEC 307	VOL. III
FUNCTIONS OF	EO 12188		VOL. III
NEGOTIATIONS	PL 93-618	SEC 104	VOL. III
POWERS OF	PL 93-618	SEC 141(C)(2)	VOL. III
PRESIDENT	PL 93-618	SEC 141	VOL. III
REPORT TO CONGRESS	PL 93-618	SEC 181	VOL. III
TRADE AGREEMENTS	PL 93-618	SEC 135	VOL. III
	PL 93-618	SEC 141	VOL. III
TRADE IN SERVICES U.S. POLICY	PL 98-573	SEC 306	VOL. III
TRADE INJURIES	PL 93-618	SEC 201	VOL. III
U.S.-INDIA FUND FOR CULTURAL, EDUCATIONAL, AND SCIENTIFIC COOPERATION DELEGATION OF FUNCTIONS	EO 12517		VOL. II
U.S.-PALAU RELATIONS			
COMPACT OF FREE ASSOCIATION APPROVAL OF	PL 99-658		VOL. III
U.S.-WESTERN HEMISPHERE COUNTRIES			
COOPERATION ON ENERGY POLICY	PL 100-373		385
UGANDA			
ELECTIONS IN	PL 96-533	SEC 719	VOL. I
FOREIGN AID NOTIFICATION REQUIREMENTS	PL 100-461	SEC 543	VOL. I
UGANDA-U.S. RELATIONS HUMAN RIGHTS	PL 95-426	SEC 610	VOL. II
UKRAINE FAMINE, COMMISSION ON APPROPRIATIONS	PL 99-180		569
UN			
DRUG TRAFFICKING EFFORTS TO CONTROL	PL 100-690	SEC 4102	VOL. I
UNDP			
U.S. CONTRIBUTIONS	PL 87-195	SEC 301	VOL. I
UNESCO			
CONTROL OVER DISSEMINATION OF NEWS	PL 97-241	SEC 108	VOL. II
RESTRICTION ON U.S. CONTRIBUTION TO	PL 97-241	SEC 109	VOL. II
U.S. CONTRIBUTIONS	PL 94-350	SEC 103	VOL. II
UNION OF SOVIET SOCIALIST REPUBLICS (SEE SOVIET UNION)			
UNITED ARAB REPUBLIC (SEE EGYPT-U.S. RELATIONS)			
UNITED NATIONS (SEE U.N.)			
UNITED NATIONS CHILDREN FUND APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I

			PAGE
UNITED NATIONS DEVELOPMENT PROGRAM (SEE UNDP)			
UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (SEE UNESCO)			
UNITED NATIONS ENVIRONMENT PROGRAM			
U.S. CONTRIBUTIONS TO	PL 99-83	SEC 402	VOL. I
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES			
U.S. CONTRIBUTIONS	PL 87-510	SEC 2	VOL. II
AUDITS OF	PL 87-510	SEC 8	VOL. II
UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE (SEE BRETTON WOODS)			
UNITED NATIONS PARTICIPATION ACT OF 1945	PL 79-264		VOL. II
APPLICABILITY TO U.S. PARTICIPATION IN THE ICAO	PL 84-885	SEC 6	VOL. II
ASSISTANCE TO U.N.			
FUNDS	PL 79-264	SEC 7	VOL. II
NONCOMBATANT PERSONNEL	PL 79-264	SEC 7	VOL. II
SUPPLIES	PL 79-264	SEC 7	VOL. II
AUTHORIZATION OF APPROPRIATIONS	PL 79-264	SEC 8	VOL. II
CONGRESSIONAL REPRESENTATIVES	PL 79-264	SEC 2	VOL. II
ECONOMIC SANCTIONS	PL 79-264	SEC 5	VOL. II
RHODESIA	PL 79-264	SEC 5(C)	VOL. II
HOUSING ALLOWANCES	PL 79-264	SEC 9	VOL. II
LODGE COMMISSION	PL 79-264	SEC 8 FN	VOL. II
MILITARY SPECIAL AGREEMENTS	PL 79-264	SEC 6	VOL. II
REPORTS TO CONGRESS	PL 79-264	SEC 4	VOL. II
U.S. REPRESENTATION	PL 79-264	SEC 2	VOL. II
INSTRUCTIONS	PL 79-264	SEC 3	VOL. II
UNITED STATES AND FOREIGN COMMERCIAL SERVICE			
ESTABLISHMENT OF	PL 100-418	SEC 2301	VOL. III
UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS			
ESTABLISHMENT OF	PL 100-204	SEC 721-730	VOL. II
UNITED STATES EMERGENCY MIGRATION AND REFUGEE ASSISTANCE FUND	PL 100-393		VOL. II
UNITED STATES INFORMATION AGENCY (SEE USIA)			
UNITED STATES INFORMATION AND EDUCATIONAL EXCHANGE ACT OF 1948	PL 80-402		VOL. II
UNITED STATES INSTITUTE OF PEACE (SEE PEACE, UNITED STATES INSTITUTE OF)			
NOMINATIONS TO THE BOARD OF	PL 99-93	SEC 802	VOL. II
UNITED STATES INSTITUTE OF PEACE ACT, 1985	PL 98-525	SEC 1701	VOL. II
UNITED STATES INTELLIGENCE ACTIVITIES	EO 12333		VOL. II
UNITED STATES INTERNATIONAL SPACE STATION			
AUTHORIZATION OF APPROPRIATIONS	PL 100-685	SEC 201	414
UNITED STATES PROPOSAL FOR THE EARLY-WARNING SYSTEM IN SINAI	PL 94-110		VOL. II
UNITED STATES-CANADA DAYS OF PEACE AND FRIENDSHIP - PROCLAMATION	PL 100-361		627
UNITED STATES-CANADA FREE-TRADE AGREEMENT			
AUTHORIZATION OF APPROPRIATIONS	PL 100-449	SEC 406	VOL. III
AUTOMOTIVE PRODUCTS			
NEGOTIATING OBJECTIVES	PL 100-449	SEC 304(C)	VOL. III
BIENNIAL REPORTS	PL 100-449	SEC 304	VOL. III
EFFECTIVE DATES	PL 100-449	SEC 501	VOL. III
EXTRAORDINARY CHALLENGE COMMITTEE	PL 100-449	SEC 407	VOL. III
IMPORT RELIEF	PL 100-449	SEC 302	VOL. III
INTELLECTUAL PROPERTY RIGHTS			
NEGOTIATING OBJECTIVES	PL 100-449	SEC 304(B)	VOL. III
PANELS AND COMMITTEES			
INTERAGENCY GROUP	PL 100-449	SEC 405	VOL. III
RELATIONSHIP TO U.S. LAW	PL 100-449	SEC 102	VOL. III
SEVERABILITY	PL 100-449	SEC 502	VOL. III
TARIFF MODIFICATION	PL 100-449	SEC 201	VOL. III

			PAGE
UNITED STATES-CANADA FREE-TRADE AGREEMENT--CONTINUED			
TERMINATION OF	PL 100-449	SEC 410	VOL. III
UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988	PL 100-449		VOL. III
APPROVAL OF	PL 100-449	SEC 101	VOL. III
UNITED STATES-EUROPEAN COMMUNITIES RELATIONS			
TRADE AGREEMENT			
CITRUS AND PASTA	PL 100-418	SEC 1122	VOL. III
UNITED STATES-EUROPEAN INTERPARLIAMENTARY GROUP			
AUTHORIZATION FOR	PL 98-164	SEC 109(C)	448
	PL 98-164	SEC 109(C)	VOL. II
UNITED STATES-HUNGARIAN CLAIMS AGREEMENT OF 1973			
(SEE HUNGARY-U.S. RELATIONS)			
UNITED STATES-INDIA FUND FOR CULTURAL, EDUCATIONAL, AND SCIENTIFIC COOPERATION ACT	PL 98-164	SEC 901	VOL. II
UNITED STATES-ISRAEL FREE TRADE AREA IMPLEMENTATION ACT OF 1985	PL 99-47		VOL. III
UNIVERSAL MILITARY TRAINING AND SERVICE ACT			
APPLICABILITY TO PEACE CORPS	PL 87-293	SEC 23	VOL. I
UPSTREAM SUBSIDIES			
COUNTERVAILING DUTIES	PL 71-361	SEC 771A	VOL. III
URANIUM			
EXPORT OF	PL 96-533	SEC 110	VOL. I
URANIUM EXPORTS			
BY U.S.	PL 96-280		332
URUGUAY-U.S. RELATIONS			
FOREIGN AID	PL 99-83	SEC 720	VOL. I
USIA			
(INTERNATIONAL COMMUNICATION AGENCY)			
APPROPRIATION AUTHORIZATION, FY 1979	PL 95-426	SEC 201	VOL. II
(SEE ALSO FOREIGN SERVICE INFORMATION OFFICERS)			
ADMINISTRATION	PL 80-402	SEC 1002	VOL. II
ADVISORY COMMISSIONS			
AUTHORITY	PL 80-402	SEC 601	VOL. II
COMPENSATION	PL 80-402	SEC 602	VOL. II
MEMBERSHIP	PL 80-402	SEC 602	VOL. II
REPORTS	PL 80-402	SEC 603	VOL. II
AFGHANISTAN			
PROGRAMMING ON	PL 100-204	SEC 206	VOL. II
APPROPRIATIONS, 1989	PL 100-459	TITLE V	VOL. II
ASSOCIATE DIRECTORS OF	PL 80-402	SEC 808	VOL. II
AUDITORS			
INCREASE OF	PL 98-164	SEC 204	VOL. II
AUTHORIZATION OF			
APPROPRIATIONS, 1988-89	PL 100-204	SEC 201	VOL. II
AUTHORIZATION, FY 1977	PL 94-350	SEC 201	VOL. II
AUTHORIZATION, FY 1978	PL 95-105	TITLE II	VOL. II
AUTHORIZATION, FY 1982-83	PL 97-241	SEC 302	VOL. II
AUTHORIZATION, FY 1984-85	PL 98-164	SEC 202	VOL. II
AUTHORIZATION, 1986-87	PL 99-93	SEC 201	VOL. II
BOOKS EXCHANGED	PL 80-402	SEC 202	VOL. II
BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS			
ESTABLISHED	PL 87-256	SEC 112	VOL. II
CARIBBEAN REGION			
SCHOLARSHIP PROGRAM FOR STUDYING	PL 100-204	SEC 216	VOL. II
CONGRESSIONAL OVERSIGHT	PL 92-226	SEC 407	VOL. I
CUBA BROADCASTS	PL 98-111	SEC 3	VOL. II
DEMONSTRATION CENTERS			
ABROAD	PL 80-402	SEC 203	VOL. II
DIRECTOR OF			
AUTHORITY AVAILABLE	EO 10477		VOL. II
DELEGATION OF			
AUTHORITY	EO 12048		VOL. II
DUTIES	EO 12048		VOL. II
EDUCATIONAL AND CULTURAL EXCHANGE	EO 11034	SEC 1-2	VOL. II
DOMESTIC ACTIVITIES			
PROHIBITION ON	PL 99-93	SEC 208	VOL. II
DRUG EDUCATION PROGRAMS			
AUTHORIZATION OF APPROPRIATIONS	PL 99-570	SEC 2027	VOL. I
EDUCATIONAL AND CULTURAL AFFAIRS	PL 100-204	TITLE III	VOL. II
EDUCATIONAL MATERIALS			
EXCHANGED	PL 80-402	SEC 202	VOL. II

		PAGE
USIA—CONTINUED		
ENGINEERING SERVICES		
PROHIBITION AGAINST	PL 80-402 SEC 403	VOL. II
EXCHANGE-OF-PERSONS PROGRAM	PL 97-241 SEC 305	VOL. II
EXTRATERRITORIAL		
DISSEMINATION	PL 80-402 SEC 501	VOL. II
FACILITIES ABROAD	PL 69-186 SEC 4	VOL. II
FILMS DISTRIBUTED WITHIN U.S.	PL 100-204 SEC 214	VOL. II
FOREIGN AID PROGRAM		
ADMINISTRATION OF	EO 12163 SEC 1-504	VOL. I
FOREIGN SERVICE	EO 10477 SEC 2	VOL. II
FUNDS		
SOURCES OF	PL 80-402 SEC 901-902	VOL. II
TRANSFERRED TO OTHER U.S. AGENCIES	PL 80-402 SEC 702	VOL. II
GERMAN-U.S. TEENAGE EXCHANGE PROGRAM	PL 98-164 SEC 211	VOL. II
GOVERNMENT PROPERTY		
USE OF	PL 80-402 SEC 803	VOL. II
IMPORTING EDUCATIONAL AND CULTURAL MATERIALS	EO 11311	VOL. II
INFORMATION DISSEMINATED	PL 80-402 SEC 501	VOL. II
INFORMATION WITHHELD	PL 80-402 SEC 1003	VOL. II
INFORMATIONAL MEDIA GUARANTIES	PL 80-402 SEC 1011	VOL. II
INTERNATIONAL COMMUNICATION AGENCY	EO 12048	VOL. II
INTERNATIONAL COMMUNICATION AGENCY AUTHORIZATION ACT, FISCAL YEARS 1980 AND 1981	PL 96-60 TITLE II	VOL. II
INTERNATIONAL YOUTH YEAR	PL 98-164 SEC 208	VOL. II
LOBBYING		
GRANTEES PROHIBITED FROM	PL 98-164 SEC 209	VOL. II
MILITARY PHOTOGRAPHS		
AVAILABILTY OF	PL 100-204 SEC 215	VOL. II
MISSION DEFINED	PL 95-426 SEC 202	VOL. II
MONOPOLIZING A MEDIUM		
PROHIBITION AGAINST	PL 80-402 SEC 502	VOL. II
NATIONAL ENDOWMENT FOR DEMOCRACY		
GRANT TO	PL 100-204 SEC 210	VOL. II
OBJECTIVES	PL 80-402 SEC 2	VOL. II
PERSONNEL COSTS AND CURRENCY FLUCTUATIONS		
ADDITIONAL APPROPRIATIONS	PL 80-402 SEC 704	VOL. II
POSTS AND PERSONNEL		
OVERSEAS		
CLOSINGS	PL 100-204 SEC 204	VOL. II
PRIOR AUTHORIZATION		
REQUIRED	PL 80-402 SEC 701	VOL. II
PRIVATE ENTERPRISE	PL 80-402 SEC 1005	VOL. II
PRIVATE SECTOR PROGRAM	PL 98-164 SEC 207	VOL. II
PRIVATE SECTOR PROGRAMS	PL 99-93 SEC 209	VOL. II
RADIO FACILITIES		
LEASING AUTHORITY	PL 80-402 SEC 801(3)	VOL. II
RELEASE OF CERTAIN OBJECTS TO U.S. MUSEUMS	PL 99-475	VOL. II
RENAMED	PL 97-241 SEC 303	VOL. II
REORGANIZATION PLAN NO. 2 OF 1977		
EFFECTIVE DATE	EO 12048 SEC 1	VOL. II
REPROGRAMMING OF FUNDS	PL 80-402 SEC 705	VOL. II
SEAL	PL 80-402 SEC 807	VOL. II
STATE DEPARTMENT		
RELATIONS WITH	PL 80-402 SEC 1009	VOL. II
STATUS OF SPECIALISTS	PL 80-402 SEC 302-303	VOL. II
TECHNICAL ASSISTANCE	PL 80-402 SEC 301-303	VOL. II
TELEVISION SERVICE		
OPERATION	PL 100-204 SEC 207	VOL. II
TRAVEL EXPENSES	PL 80-402 SEC 805	VOL. II
U.S. AGENCIES PARTICIPATING	PL 80-402 SEC 401-403	VOL. II
U.S. PARTICIPATION IN U.N.	PL 80-402 SEC 3	VOL. II
VOICE OF AMERICA	PL 100-204 TITLE IV	VOL. II
AUTHORIZATION OF APPROPRIATIONS, 1988-89	PL 100-204 SEC 401	VOL. II
WORLDNET		
AUDIENCE SURVEY	PL 100-204 SEC 209	VOL. II
REPROGRAMMING OF FUNDS	PL 100-204 SEC 208	VOL. II
USIA AUTHORIZATION ACT, FISCAL YEAR 1978	PL 95-105 TITLE II	VOL. II
USIA AUTHORIZATION ACT, FISCAL YEARS 1982 AND 1983	PL 97-241 SEC 301	VOL. II
USIA AUTHORIZATION ACT, FISCAL YEARS 1984 AND 1985	PL 98-164 SEC 201	VOL. II

			PAGE
USIA AUTHORIZATION ACT, FISCAL YEARS 1986 AND 1987	PL 99-93		VOL. II
USIA AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989	PL 100-204	TITLE II	VOL. II
USSR			
(SEE SOVIET UNION)			
V			
VATICAN-U.S. RELATIONS			
DIPLOMATIC RELATIONS BETWEEN	PL 98-164	SEC 134	VOL. II
VEHICLES			
USE AT OVERSEAS POSTS	PL 84-885	SEC 28	VOL. II
VENUE			
(SEE COURTS VENUE)			
VESSELS			
DEVELOPING COUNTRIES USE OF	PL 97-360		VOL. I
DISPOSAL OF	PL 84-1028	SEC 7307	VOL. I
TRANSFER OF	PL 97-342		VOL. I
VICTIMS OF TERRORISM			
COMPENSATION ACT	PL 99-399	SEC 801	VOL. II
VIENNA CONVENTION ON DIPLOMATIC RELATIONS			
COMPLEMENTING LEGISLATION	PL 95-393		VOL. II
VIETNAM			
(SEE ALSO NORTH VIETNAM-U.S. RELATIONS)			
(SEE ALSO SOUTH VIETNAM-U.S. RELATIONS)			
REFUGEE RELIEF			
AMERASIANS	PL 100-461	TITLE II	VOL. I
VIETNAM WAR			
(SEE INDOCHINA WAR)			
VIETNAM-U.S. RELATIONS			
AID PROHIBITION	PL 100-461	SEC 550	VOL. I
	PL 95-424	SEC 602	VOL. I
	PL 95-426	SEC 705	VOL. II
CAMBODIAN OCCUPATION	PL 100-204	SEC 1244	VOL. II
SENSE OF CONGRESS	PL 100-180	SEC 1404	VOL. I
CLAIMS	PL 81-455	TITLE VII	494
FOREIGN AID			
PROHIBITED	PL 96-533	SEC 717	VOL. I
REPARATIONS PROHIBITION	PL 95-105	SEC 505	VOL. II
VISAS			
DENIED TO DRUG TRAFFICKERS	PL 99-570	SEC 2011	VOL. I
NATIONAL EMERGENCY	66 STAT 190		VOL. II
OFFICES	PL 82-414	SEC 104(C)	VOL. II
VISITORS, INTERNATIONAL PROGRAM	PL 87-256	SEC 112(A)(3)	VOL. II
AUTHORIZATION, 1984-85	PL 98-164	SEC 206	VOL. II
VISUAL AND AUDITORY MATERIALS			
(SEE EDUCATIONAL AND CULTURAL EXCHANGE, IMPORTING MATERIALS)			
VOICE OF AMERICA			
BROADCAST PRINCIPLES	PL 80-402	SEC 503	VOL. II
CUBA BROADCASTS	PL 98-111	SEC 4	VOL. II
FACILITIES			
IMPROVEMENT OF	PL 98-164	SEC 203	VOL. II
MODERNIZATION OF FACILITIES	PL 99-93	SEC 202	VOL. II
VOLUNTARY AGENCIES			
ADVISORY COMMITTEE ON VOLUNTARY FOREIGN AID	PL 87-195	SEC 607	VOL. I
FOREIGN AID	PL 87-195	SEC 607	VOL. I
	PL 87-195	SEC 635	VOL. I
TRANSFER OF SURPLUS PROPERTY TO	PL 87-195	SEC 607	VOL. I
VOLUNTEER SERVICE PROGRAMS (INTERNATIONAL)			
ENCOURAGEMENT OF	PL 87-293	TITLE III	VOL. I
VOLUNTEER SERVICE PROGRAMS			
(SEE ALSO PEACE CORPS)			
W			
WALLENBERG, RAOUL	PL 98-164	SEC 1006	VOL. II
WAR POWERS			
DEFINED	PL 93-148	SEC 2	VOL. II
INTERPRETATION OF	PL 93-148	SEC 8	VOL. II
LEGISLATION PRIORITY PROCEDURES FOR	PL 93-148	SEC 6-7	VOL. II
MULTINATIONAL FORCE IN LEBANON U.S. PARTICIPATION	PL 98-119		VOL. II
PRESIDENTIAL USE OF CONSULTATION WITH CONGRESS	PL 93-148	SEC 3	VOL. II
PROTECTION OF U.S. CITIZENS ABROAD	15 STAT 224		VOL. II

			PAGE
WAR POWERS--CONTINUED			
REMOVAL OF U.S. FORCES EXPEDITED PROCEDURES IN CONGRESS	PL 98-164	SEC 1013	VOL. II
REPORTS ON CIA	PL 87-195	SEC 662	VOL. I
REPORTS TO CONGRESS	PL 93-148	SEC 4-5	VOL. II
TERMINATING HOSTILITIES	PL 93-148	SEC 5	VOL. II
U.N. SECURITY COUNCIL SPECIAL AGREEMENTS	PL 79-264	SEC 6	VOL. II
WAR POWERS RESOLUTION	PL 93-148		VOL. II
WEST BANK			
NEW U.S. FACILITIES PROHIBITION AGAINST	PL 100-204	SEC 130	VOL. II
WESTERN SAHARA-U.S. RELATIONS			
FOREIGN AID CONDITIONS FOR	PL 99-83	SEC 808	VOL. I
WHALES (SEE ENDANGERED SPECIES)			
WHALING CONVENTION ACT OF 1949	PL 81-676		153
WHALING TREATY ACT REPEALED	PL 81-676	SEC 16	159
WHEAT RESERVE ESTABLISHED	PL 96-494	TITLE III	VOL. I
WHEAT SURPLUS OVERSEAS DONATIONS	PL 81-439	SEC 416(B)	VOL. I
WHO U.S. CONTRIBUTION TO	PL 95-105	SEC 103	VOL. II
WILDLIFE SANCTUARY FOR HUMPBACK WHALES	PL 99-630		160
WINE EQUITY AND EXPORT EXPANSION ACT OF 1984	PL 98-573	SEC 901	VOL. III
ELIMINATING TRADE BARRIERS	PL 100-418	SEC 1125	VOL. III
WOMEN			
DEVELOPMENT PROCESS	PL 87-195	SEC 113	VOL. I
INCREASED ROLE IN MDB POLICY MAKING	PL 95-118	SEC 1604	VOL. III
INTEGRATION OF	PL 87-195	SEC 305	VOL. I
PEACE CORPS	PL 87-293	SEC 3(D)	VOL. I
U.N. DECADE FOR	PL 87-195	SEC 113(C)	VOL. I
1985 CONFERENCE ON	PL 98-164	SEC 118	VOL. II
WORLD ADMINISTRATIVE RADIO CONFERENCE			
U.S. DELEGATION	PL 96-60	SEC 406	VOL. II
WORLD ALTERNATE ENERGY CONFERENCE	PL 95-426	SEC 609	VOL. II
WORLD BANK			
(SEE ALSO IDA)			
ACCEPTANCE OF MEMBERSHIP	PL 79-171	SEC 2	VOL. III
CAPITAL STOCK U.S. QUOTA	PL 79-171	SEC 19, 23	VOL. III
CAPITAL STOCK INCREASE U.S. PARTICIPATION	HR 4645		VOL. III
GENERAL CAPITAL INCREASE U.S. SUBSCRIPTION TO	PL 79-171	SEC 39	VOL. III
IFC	PL 84-350	SEC 10	VOL. III
INTERNATIONAL DEBT REVIEW OF	PL 100-418	SEC 3113	VOL. III
POLICY BASED LENDING DEBT REDUCTION	HR 4645	SEC 3	VOL. III
LIMITATIONS ON	HR 4645	SEC 4	VOL. III
U.S. CONTRIBUTION APPROPRIATIONS, 1989	PL 100-461	TITLE I	VOL. I
WORLD BANK ARTICLES OF AGREEMENT INTERPRETATION	PL 79-171	SEC 12	VOL. III
WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT CONTRIBUTION TO	PL 99-93	SEC 107	VOL. II
WORLD FOOD CONFERENCE PRESIDENTIAL IMPLEMENTATION OF POLICIES	PL 93-559	SEC 55	VOL. I
WORLD FOOD DAY - PROCLAMATION	PL 100-451		VOL. I
WORLD HEALTH ORGANIZATION (SEE WHO)			
SPECIAL PROGRAM ON AIDS APPROPRIATIONS, 1989	PL 100-461	TITLE II	VOL. I
WORLD HERITAGE TRUST FUND U.S. CONTRIBUTION TO	PL 98-164	SEC 108	VOL. II
WORLD INTELLECTUAL PROPERTY ORGANIZATION	PL 98-164	SEC 112	VOL. II
WORLDWIDE BOOK PROGRAM INITIATIVE	PL 99-93	SEC 205	VOL. II
Y			
YANG, WEI RELEASE OF	PL 100-204	SEC 907	VOL. II
YEAR OF NEW SWEDEN PLAQUES	PL 100-295		620
YOUTH PROGRAMS USIA	PL 98-164	SEC 208	VOL. II

		PAGE
YUGOSLAV CLAIMS AGREEMENT OF 1948	PL 81-455 SEC 2 PL 81-455 SEC 4	450 452
YUGOSLAVIA-U.S. RELATIONS		
OPIC	PL 87-195 SEC 239	VOL. I
SCIENCE AND TECHNOLOGY	PL 97-241 SEC 110	VOL. II
SCIENCE AND TECHNOLOGY AGREEMENT	PL 96-60 SEC 104	VOL. II
Z		
ZABLOCKI OUTPATIENT FACILITY AUTHORIZATION OF FUNDING	PL 98-266	VOL. I
ZAIRE		
ECONOMIC SUPPORT FUND	PL 99-83 SEC 804	VOL. I
ZAIRE-U.S. RELATIONS		
SHABA AIRLIFT	PL 96-92 SEC 26	VOL. I
ZIONISM		
U.N. RESOLUTION		
U.S. RESPONSE TO	H RE[illegible]4-855 PL 9[illegible] 90	VOL. II VOL. II
UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 3379 (XXX)		
U.S. RESPONSE TO	PL 100-169	VOL. II
ZORINSKY, EDWARD		
MEMORIAL LIBRARY	PL 100-204 SEC 306	VOL. II

○

EDGE INDEX

To use the index on the left, bend the publication over and locate the desired section by following the black markers.

LAW OF THE SEA AND SELECTED MARITIME LEGISLATION (p. 1)

ENERGY, NATURAL RESOURCES, AND ENVIRONMENT (p. 241)

AVIATION, SPACE, AND INTERNATIONAL SCIENTIFIC COOPERATION (p. 399)

OTHER LEGISLATION (p. 429)

INDEX (p. 641)